

DIGEST OF NEW REGULATIONS

CALIFORNIA REGULATORY CODE SUPPLEMENT DIGEST

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OFFICIAL PUBLICATION

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SUMMARIES OF NEW REGULATIONS

For subscribers to the amendment service for Complete Code.

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Title 2

Fair Political Practices Commission

Amendment of conflict-of-interest code for Fair Political Practices Commission

Summary: The Fair Political Practices Commission has amended its conflict-of-interest code. Conflict-of-interest codes designate employees who must disclose certain investments, income, interests in real property and business positions and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

The general provisions have been amended to indicate that the statements of economic interests for Fair Political Practices Commissioners are filed with the Office of the Attorney General.

The list of Commission employees and officers designated as subject to the financial disclosure requirements has been amended to reflect the existing personnel structure.

Disclosure categories indicate the types of financial interests that designated employees must report according to the type of position held. One of the disclosure categories, applicable to enforcement division staff and others, has been amended to include disclosure of interests in real property. Other minor changes have been made for clarification.

Regulatory Action: Changes affect title 2, section 18351.

Filed: 3/23/2010. **Effective:** 4/22/2010. **OAL File No.:** 10-0225-04

Agency Contact: Virginia Latteri-Lopez (916) 322-5660

Title 3

Food and Agriculture, Department of

Formal adoption of quarantine requirements for white striped fruit fly

Summary: The Department of Food and Agriculture has formally adopted a regulation establishing interior quarantine requirements for the white striped fruit fly (*Bactrocera albistrigata*). The designated quarantine zone, in the La Verne area of Los Angeles and San Bernardino counties, is subject to restrictions on the movement of hosts and possible carriers of this pest.

The regulations, which were in effect on an emergency basis, have now been formally adopted. Two small changes have been made in this filing to correct minor typographical errors.

Regulatory Action: Certificate of Compliance. Changes affect title 3, section 3436.

Filed: 7/31/2009, 1/19/2010. **Effective:** 7/31/2009, 1/19/2010. **OAL File No.:** 10-0223-02

Certificate of Compliance Filed: 3/24/2010.

Agency Contact: Stephen Brown (916) 654-1017

Food and Agriculture, Department of

Formal adoption of action declaring two counties as Mexican fruit fly eradication areas

Summary: The Department of Food and Agriculture has formally adopted an amendment declaring Sacramento and Yolo counties as eradication areas for the Mexican fruit fly (*Anastrepha ludens*). The amendment authorizes the means and methods used in the control and eradication of this pest within the declared eradication area.

The regulations, which were in effect on an emergency basis, have now been formally adopted.

Regulatory Action: Certificate of Compliance. Changes affect title 3, section 3588.

Filed: 8/27/2009. **Effective:** 8/27/2009. **OAL File No.:** 10-0218-05

Certificate of Compliance Filed: 3/24/2010.

Agency Contact: Susan McCarthy (916) 654-1017

Title 4

School Finance Authority

Addition of “preference point” categories for awarding school construction and modernization grants

Summary: The California School Finance Authority (CSFA) assists school districts and community college districts in financing school construction projects. In 2004 and 2009, the United States Department of Education approved grant awards to CSFA pursuant to the State Charter School Facilities Incentive Grants Program (Program), as amended by the No Child Left Behind Act of 2001. The Program provided for \$49,250,000 in 2004 and \$46,132,749 in 2009 to be awarded over five-year periods for the purposes of funding facilities for California charter schools based on student head counts. Grant funds may be applied toward a charter school’s annual costs of rent, lease, mortgage, or debt service payments for facilities, or toward the purchase, design, and construction costs of acquiring land and constructing or renovating a facility.

Pursuant to federal rules governing the grants, an annual portion of the funds must be allocated during each of five consecutive federal fiscal years. The allocation of these grant funds to eligible charter schools is based on “preference points” assigned for certain factors, including the low-income population served by the school, the school’s nonprofit status, whether

a school is located in an overcrowded attendance area, and the school’s performance.

The amendments clarify the grant requirements, add two more “preference point” categories and increase the weight allocated to “preference points” based on student performance.

Regulatory Action: Changes affect title 4, sections 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10185, 10187, 10188 and 10190.

Filed: 3/25/2010. **Effective:** 4/24/2010. **OAL File No.:** 10-0210-03

Agency Contact: Katrina Johantgen (213) 620-2305

Title 8

Occupational Safety and Health Standards Board

Amendment of safety requirements for self-feed circular rip-saws

Summary: The Occupational Safety and Health Standards Board has amended the general industry safety orders pertaining to self-feed circular rip-saws. Saws of this type are known as gang saws, straight line rip-saws, or other similar names, and may have either a single or multiple circular blade or blades.

Prior to this action, the regulation required that a spreader be fastened securely to such saws. A spreader is a flat metal device located behind the saw blade designed to prevent the saw blade kerf from closing on the sides of the blade, which could cause the work piece to kick back. The Board has found that manufacturers do not provide spreaders on self-feed circular rip-saws. Spreaders are not necessary if the saws are equipped with anti-kickback devices and power feed devices that are properly adjusted for each piece of stock.

This action replaces the requirement for an attached spreader with a provision requiring employers to ensure that power feed devices are properly adjusted for each piece of stock in order to reduce the possibility of kickback. The Board has stated that this performance standard is consistent with general industry practices.

Regulatory Action: Changes affect title 8, section 4301.

Filed: 3/24/2010. **Effective:** 4/23/2010. **OAL File No.:** 10-0223-04

Agency Contact: Marley Hart (916) 274-5721

Title 13

Air Resources Board

Nonsubstantive updates to statutory references providing penalties for violations of bus idling control measures

Summary: The Air Resources Board has made nonsubstantive amendments to update the statutory references to penalties that may be imposed upon motor carriers and drivers of school buses, school pupil activity buses, youth buses, transit buses or general public paratransit vehicles for violations of idling control measures.

Regulatory Action: Change without regulatory effect. Changes affect title 13, section 2480.

Filed: 3/25/2010. **Effective:** 3/25/2010. **OAL File No.:** 10-0210-05

Agency Contact: Trini Balcazar (916) 445-9564

Air Resources Board

Editorial correction

Summary: An editorial correction has been made to insert an inadvertently omitted article heading above a regulation providing "best available control technology" standards for heavy-duty diesel vehicles.

Regulatory Action: Editorial correction. Changes affect title 13, section 2025.

Filed: 3/26/2010. **Effective:** 3/26/2010. **OAL File No.:** M1302025

Agency Contact: Regulations Coordinator (916) 322-2990

Title 25

Housing Finance Agency, California

Amendment of conflict-of-interest code for Housing Finance Agency

Summary: The California Housing Finance Agency has amended its conflict-of-interest code. Conflict-of-interest codes designate employees who must disclose certain investments, income, interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

The list of positions designated as subject to the financial disclosure requirements has been amended to reflect the existing personnel structure. This action also revises the disclosure categories indicating the types of financial interests that designated employees must report according to the type of position held.

Regulatory Action: Changes affect title 25, section 10001.

Filed: 3/26/2010. **Effective:** 4/25/2010. **OAL File No.:** 10-0311-03

Agency Contact: Misty Miller (916) 445-0178



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March 26, 2010

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February 5, 2010; Register 2010, No. 6
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February 26, 2010; Register 2010, No. 9
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March 12, 2010; Register 2010, No. 11
March 19, 2010; Register 2010, No. 12
March 26, 2010; Register 2010, No. 13

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5. Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
6. Amendment of subsection (g) filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29).
7. Repealer and new section filed 7–16–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 18329.5. Commission Advice Procedure — Government Code Sections 87300–87306.

(a) The Commission shall not render formal written advice or informal assistance regarding the interpretation of an agency's conflict of interest code or the application of that code to a specific individual unless the following criteria are satisfied:

(1) The individual, agency, or authorized representative requesting advice must comply with all the requirements of 2 Cal. Code Regs. section 18329 regarding requests for formal written advice or informal assistance; and

(2) The Commission is the Code Reviewing Body.

Where the Commission is the code reviewing body for the conflict of interest code in question, the individual or his or her authorized representative requesting the advice or assistance must first request a determination from the agency adopting the conflict of interest code; or

(3) The Commission is not the Code Reviewing Body.

(A) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an individual or his or her authorized representative, he or she must first request a determination from the agency and the code reviewing body for such conflict of interest code.

(B) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an agency, the agency must first request a determination from the code reviewing body for such conflict of interest code.

(b) The Commission may, upon request, provide technical assistance to an individual regarding technical compliance with his or her reporting requirements under the individual's current conflict of interest code.

(c) The Commission may, upon request, provide advice or technical assistance to a party for the purpose of determining whether that party is an agency as defined in Government Code sections 82041 and 82049, and is therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code Section 87300. The Commission may also, upon request, provide advice or assistance to an agency concerning which positions should be designated in the agency's Conflict of Interest Code through application of 2 Cal. Code Reg. section 18701. However, a request by an agency to be relieved of the duty to adopt a Conflict of Interest Code may only be processed as a request for exemption pursuant to 2 Cal. Code Reg. section 18751.

(d) Section 87200: "Other Public Officials Who Manage Public Investments"

(1) Notwithstanding subdivision (a) above, the Commission may provide advice or assistance to an individual concerning whether he or she is subject to Government Code section 87200 at any time.

(2) When the Commission determines that an individual is not a "public official who manages public investments" pursuant to Government Code section 87200, the individual's agency or code reviewing body must then determine whether that individual has filing obligations pursuant to Chapter 7 of the Act. The agency or code reviewing body may request advice or assistance in making that determination pursuant to the procedures in subdivision (a) above.

(e) Requests.

A requestor may be asked to provide the following information when requesting advice or assistance pursuant to this regulation:

- (1) A copy of all pertinent agency determinations regarding an individual's obligations under Chapter 7 of the Act.
- (2) A copy of an individual's employment contract;
- (3) A copy of an individual's duty statement;
- (4) A copy of the applicable conflict of interest code; and
- (5) Any other pertinent information.

COMMENT: An individual potentially subject to a conflict of interest

code may petition the agency to amend its code. An individual may appeal a denied petition to the code reviewing body and may also seek judicial review of an action taken by the code reviewing body (Government Code sections 87307 and 87308). The code reviewing body has the authority to modify or suspend the disclosure obligations pending resolution of the appeal (2 Cal. Code Regs. section 18737).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83114(b) and 87300–87306, Government Code.

HISTORY

1. New section filed 6–12–2003; operative 6–12–2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 24).
2. New subsection (c) and subsection relettering filed 12–29–2005; operative 1–28–2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).

§ 18350. Moscone Governmental Conflict of Interest Act. Disclosure of Economic Interests by Fair Political Practices Commission and Staff. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 3700–3710, Government Code.

HISTORY

1. New Chapter 5 (Section 18350) filed 5–30–75 as an emergency; effective upon filing (Register 75, No. 22).
2. Certificate of Compliance filed 8–14–75 (Register 75, No. 33).
3. Repealer filed 9–28–76; effective thirtieth day thereafter (Register 76, No. 40).

§ 18351. Conflict-of-Interest Code of the Fair Political Practices Commission.

(a) The Political Reform Act, Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict-of-Interest Codes. The Fair Political Practices Commission has adopted a regulation, Regulation 18730, which contains the terms of a standard model Conflict-of-Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Regulation 18730 and any amendments to it duly adopted by the Fair Political Practices Commission along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict-of-Interest Code of the Fair Political Practices Commission.

Individuals in designated positions shall file statements of economic interests with the Fair Political Practices Commission which will make the statements available for public inspection and reproduction. (Gov. Code Section 81008.) Statements filed by all individuals in designated positions will be retained by the Fair Political Practices Commission. For informational purposes only: Statements for Fair Political Practices Commissioners are filed with the Office of the Attorney General.

(b) Appendix

Designated Positions	Assigned Disclosure Category
EXECUTIVE OFFICE	
Executive Director	1
Communications Director	1
Legislative Coordinator	1
Executive Fellow	3
Consultant	*
LEGAL DIVISION	
General Counsel	1
Assistant General Counsel	1
FPPC Counsel	1
Political Reform Consultant	3
Staff Services Analyst/Legal Analyst	4

<i>Designated Positions</i>	<i>Assigned Disclosure Category</i>
ENFORCEMENT DIVISION	
Division Chief	1
Assistant Division Chief	1
Chief Investigator	1
FPCC Counsel	1
All Investigators (except Chief Investigator)	2
All Program Specialists	2
Political Reform Consultant	2
Staff Services Analyst/Associate Governmental Program Analyst	2
TECHNICAL ASSISTANCE DIVISION	
Division Chief	1
Assistant Chief	1
Manager, Filing Officer Programs	3
Political Reform Consultant	3
Staff Services Analyst	3
ADMINISTRATION DIVISION	
Division Chief	1
Data Processing Manager	4
Associate Information Systems Analyst (Network Operations)	5
Personnel Officer	4
Budget Officer	4

* Consultants shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The Executive Director may determine in writing that a particular consultant, although a "designated position" is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Director is a public record and shall be retained for public inspection in the same manner and location as this Conflict-of-Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict-of-Interest Code.

Disclosure Categories

Category 1

A designated position in this category must report all investments, business positions, interests in real property, and sources of income, including gifts, loans, and travel payments.

Category 2

A designated position in this category must report:

Interests in real property.

Investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that:

(A) Are, or were, during the previous two years a "candidate," "public official," "committee," "lobbyist," "lobbying firm," or "lobbyist employer" within the meaning of the Political Reform Act, or file periodic reports pursuant to Sections 86114 and 86116; or

(B) Are attorneys that represent persons described in Category 2(A) in matters directly related to their status as described in Category 2(A); or

(C) Are committee treasurers; or

(D) Were the subject of a complaint to, investigation by, or enforcement action of, the Commission, that was acted upon or participated in by the filer during the period covered by the statement.

Category 3

A designated position in this category must report investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that:

(A) Are, or were, during the previous two years a "candidate," "public official," "committee," "lobbyist," "lobbying firm," or "lobbyist employer" within the meaning of the Political Reform Act, or file periodic reports pursuant to Sections 86114 and 86116; or

(B) Are attorneys that represent persons described in Category 3(A) in matters directly related to their status as described in Category 3(A); or

(C) Are committee treasurers.

Category 4

A designated position in this category must report investments and business positions in business entities and income, including gifts, loans, and travel payments, from sources that are of the type that within the previous two years has provided services, equipment, leased space, materials, or supplies to the Commission.

Category 5

A designated position in this category must report investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the Commission, as well as entities providing computer consultant services.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87302, 87303, 87306 and 87311, Government Code.

HISTORY

1. New section filed 9-28-76; effective thirtieth day thereafter (Register 76, No. 40).
2. Amendment filed 5-2-79; effective thirtieth day thereafter (Register 79, No. 18).
3. Repealer and new section filed 4-22-81; effective thirtieth day thereafter (Register 81, No. 17).
4. Amendment filed 2-10-82; effective thirtieth day thereafter (Register 82, No. 7).
5. Amendment filed 10-10-86; effective thirtieth day thereafter (Register 86, No. 41).
6. Amendment filed 9-11-90; operative 10-11-90 (Register 90, No. 43). Submitted to OAL for printing only pursuant to Government Code section 11343.8.
7. Amendment of section and Appendix filed 8-28-95; operative 8-28-95 pursuant to Government Code Section 11343.4(d). Approved by Fair Political Practices Commission (Register 95, No. 35).
8. Editorial correction deleting previously repealed text (Register 95, No. 39).
9. Change without regulatory effect amending second paragraph in subsection (a) and Appendix filed 10-2-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 40).
10. Amendment of Appendix and Reference citations filed 2-26-99; operative 3-28-99 (Register 99, No. 9). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 1-21-99 by the Attorney General of the State of California as required by Government Code section 82011.
11. Amendment of Appendix filed 5-10-2002; operative 6-9-2002 (Register 2002, No. 19). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 4-2-2002 by the Attorney General of the State of California as required by Government Code section 82011.
12. Amendment of section and Appendix filed 1-23-2006; operative 2-22-2006 (Register 2006, No. 4). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 12-8-2005 by the Attorney General of the State of California as required by Government Code section 82011.
13. Amendment of section and Appendix filed 12-17-2007; operative 12-17-2007 (Register 2007, No. 51). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 11-8-2007 by the Attorney General of the State of California as required by Government Code section 82011.
14. Amendment of section heading, section and Appendix filed 3-23-2010; operative 3-23-2010 (Register 2010, No. 13). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 1-22-2010 by the Attorney General of the State of California as required by Government Code section 82011.

§ 18360. Complaints.

(a) Pursuant to Section 83115, a person may submit a sworn complaint to the Commission or the Commission may on its own initiative investigate an alleged violation of the Act.

(b) A sworn complaint shall be filed on a form made available by the Commission and shall comply with all of the following requirements:

- (1) Be in writing.
- (2) Identify the person or persons who allegedly violated the Act and, if known, the specific provision or provisions of the Act allegedly violated.
- (3) Describe with as much particularity as possible the facts constituting each alleged violation.
- (4) Be based on facts of which the complainant has personal knowledge, or based on information and belief supported by documentary or other evidence included or described in the complaint.

(5) Include or describe with as much particularity as possible evidence or means of obtaining evidence in support of the complaint.

(6) Include names and addresses of potential witnesses, if known.

(7) Be signed by the complainant under penalty of perjury.

(c) This regulation does not prevent a person from complaining by telephone to the Commission or requesting anonymity when doing so,

but only a sworn complaint filed substantially in conformity with subdivision (b) entitles the complainant to the procedural rights set forth in Section 83115 and in this regulation.

(d) Prior to each regularly scheduled Commission meeting, the Commission staff shall provide each member of the Commission a report with the information specified in paragraphs (1) and (2):

[The next page is 413.]

6. Amendment of subsection (b) filed 3-18-2009 as an emergency; operative 3-18-2009 (Register 2009, No. 12). A Certificate of Compliance must be transmitted to OAL by 9-14-2009 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-4-2008 and 3-4-2009 orders transmitted to OAL 5-28-2009 and filed 7-7-2009 (Register 2009, No. 28).
8. Redesignation of portion of subsection (b) as new subsection (b)(1), new subsections (b)(2) and (c)(4), subsection renumbering and amendment of newly designated subsection (c)(5)(A) filed 8-27-2009 as an emergency; operative 8-27-2009 (Register 2009, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-23-2010 or emergency language will be repealed by operation of law on the following day.
9. New subsection (b)(3) filed 9-1-2009 as an emergency; operative 9-1-2009 (Register 2009, No. 36). A Certificate of Compliance must be transmitted to OAL by 3-1-2010 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (b)(1) refiled 9-14-2009 as an emergency; operative 9-14-2009 (Register 2009, No. 38). A Certificate of Compliance must be transmitted to OAL by 12-14-2009 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b)(1), repealer of subsections (c)(5)(D) and (d)(1)(A)-(C), amendment of subsections (d)(1)-(2) and new subsections (d)(3)-(4) filed 10-30-2009 as an emergency; operative 10-30-2009 (Register 2009, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-28-2010 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (b)(1), new subsection (b)(2) and subsection renumbering filed 11-16-2009 as an emergency; operative 11-16-2009 (Register 2009, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-17-2010 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsections (b)(1)-(2) and new subsection (b)(5) filed 11-25-2009 as an emergency; operative 11-25-2009 (Register 2009, No. 48). A Certificate of Compliance must be transmitted to OAL by 5-24-2010 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 9-14-2009 order transmitted to OAL 11-25-2009 and filed 1-6-2010 (Register 2010, No. 2).
15. Redesignation of portion of subsection (b) as new subsection (b)(1), new subsection (b)(2) and (c)(4), subsection renumbering and amendment of newly designated subsection (c)(5)(A) refiled 2-26-2010 as an emergency; operative 2-26-2010 (Register 2010, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-27-2010 or emergency language will be repealed by operation of law on the following day.
16. New subsection (b)(3) refiled 2-26-2010 as an emergency; operative 2-26-2010 (Register 2010, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-27-2010 or emergency language will be repealed by operation of law on the following day.

§ 3436. *Bactrocera albistrigata* Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. White striped fruit fly, *Bactrocera albistrigata*.

(b) Area Under Quarantine.

(1) In the Counties of Los Angeles and San Bernardino, in the La Verne area: Beginning at the intersection of N Grand Avenue and W Sierra Madre Avenue; then, easterly along W Sierra Madre Avenue to its intersection with Rainbow Drive; then, starting northerly along said drive to its northeastern most point; then northwesterly along an imaginary line to its intersection with the boundary line of Angeles National Forest and Glendora Ridge Motorway; then, starting easterly along said motorway to its intersection with Glendora Mountain Road; then, easterly along an imaginary line to its intersection with Mount Baldy Road and Shinn Road; then, starting northerly along Shinn Road to its intersection with N Mountain Avenue; then, starting easterly along said avenue to its intersection with W 16th Street; then, westerly along said street to its intersection with N Benson Avenue; then, southerly along said avenue to its intersection with W Arrow Highway; then, westerly along said highway to its intersection with N Central Avenue; then, southerly along said avenue to its intersection with Central Avenue; then, southerly along said avenue to its intersection with US Interstate 10; then, starting southwesterly along said interstate to its intersection with 34.081951 latitude and -117.706991 longitude; then, southerly along an imaginary line to its intersection with Palo Verde Street and Ramona Avenue; then, southerly along said avenue to its intersection with Holt Boulevard; then, westerly along said boulevard to its intersection with E Holt Avenue; then, westerly along said avenue to its intersection with W Holt Avenue; then, westerly along said avenue to its intersection with State Highway 71; then,

northwesterly along said highway to its intersection with US Interstate 10; then, starting southwesterly along said interstate to its intersection with E Via Verde Street; then, northeasterly along said street to its intersection with Via Verde; then, starting easterly along Via Verde to its intersection with W Puente Street; then, starting northwesterly along said street to its intersection with E Puente Street; then, starting northwesterly along said street to its intersection with N Reeder Avenue; then, starting northerly along said avenue to its intersection with E Badillo Street; then, starting southwesterly along said street to its intersection with Glendora Avenue; then, northerly along said avenue to its intersection with E Arrow Highway; then, westerly along said highway to its intersection with S Grand Avenue; then, northerly along said avenue to its intersection with N Grand Avenue; then, northerly along said avenue to the point of beginning.

(c) Articles and Commodities Covered. The following are declared to be hosts and possible carriers of white striped fruit fly.

(1) All fruit, vegetables or berries of the following:

Scientific Name	Common Name
<i>Aglaia argentea</i>	
<i>Averrhoa carambola</i>	Carambola
<i>Calophyllum inophyllum</i>	Alexandrian laurel
<i>Gmelina elliptica</i>	Badhara bush
<i>Mimusops elengi</i>	Bakula
<i>Guettarda speciosa</i>	Beach gardenia
<i>Syzygium aromaticum</i>	Clove
<i>Psidium guajava</i>	Guava
<i>Artocarpus heterophyllus</i>	Jackfruit
<i>Neisosperma oppositifolium</i>	Kojbar
<i>Syzygium malaccense</i>	Malay-apple
<i>Mangifera indica</i>	Mango
<i>Polyalthia longifolia</i>	Mast tree
<i>Scolopia spinosa</i>	
<i>Syzygium</i> spp.	
<i>Syzygium aqueum</i>	Watery rose-apple
<i>Syzygium jambos</i>	Rose apple
<i>Syzygium samarangense</i>	Water apple
<i>Terminalia catappa</i>	Tropical almond
<i>Terminalia procera</i>	Singapore almond

(2) Soil within the drip area of plants producing, or which have produced fruit or berries as listed in (c)(1) above.

(3) Any other product, article, or means of conveyance when it is determined by the Secretary or county agricultural commissioner to present a hazard of spreading live life stages of white striped fruit fly and the person in possession thereof has been so notified.

(d) Restrictions.

(1) At the wholesale level, articles and commodities covered in Section (c) are prohibited movement within or from the area under quarantine except as provided in (A) or (B) below:

(A) If the article or commodity has been treated in a manner approved by the department to eliminate white striped fruit fly, is transported in a manner to preclude exposure to white striped fruit fly, and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming compliance with this subsection; or,

(B) The article or commodity is moving for treatment for white striped fruit fly or processing and in a manner approved by the department to preclude exposure to white striped fruit fly and is accompanied by a written certificate issued by an authorized State or county agricultural official affirming such movement has been authorized under this subsection.

(2) At the wholesale level, articles and commodities covered in Section (c) which have been commercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when accompanied by a shipping document indicating the point of origin and destination and moved in compliance with (A), (B) or (C) below:

(A) If the article or commodity is moving directly through the area under quarantine without delay and by a direct route in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the white striped fruit fly while enroute through the area; or,

(B) The article or commodity is destined to a wholesale or retail establishment within the quarantined area and, if moving between 9 a.m. and sunset, is transported in an enclosed vehicle or container or completely enclosed by a covering to prevent exposure to the white striped fruit fly; or

(C) The article or commodity is destined to a commercial processing facility.

(3) At the retail level, articles and commodities covered which have been commercially produced are prohibited movement from or within the area under quarantine except when the person in possession has a sales slip or other comparable document showing the commodity was purchased from a commercial establishment.

(4) Articles and commodities covered which have been noncommercially produced within the area under quarantine, including "backyard" production, are prohibited movement from the premises where grown except under written authorization of the department or county agricultural commissioner.

(5) Articles and commodities covered which have been noncommercially produced outside the area under quarantine are prohibited movement into the area under quarantine except when the person in possession has signed a statement showing the commodity, amount, origin, destination, and date of transportation.

(6) Within the area under quarantine, no wholesale or retail establishment shall handle, sell, or offer for sale any article or commodity covered unless such commodities at all times are maintained in a manner approved by the department to preclude exposure to white striped fruit fly. No commodity covered shall be held for sale or sold from a truck, trailer, or other mobile vehicle.

NOTE: Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code. Reference: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

HISTORY

1. New section filed 7-31-2009 as an emergency; operative 7-31-2009 (Register 2009, No. 31). A Certificate of Compliance must be transmitted to OAL by 1-27-2010 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1-19-2010 as an emergency; operative 1-19-2010 (Register 2010, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-19-2010 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-19-2010 order, including amendment of subsections (c)(3) and (d)(2)(B), transmitted to OAL 2-23-2010 and filed 3-24-2010 (Register 2010, No. 13).

§ 3437. European Grapevine Moth Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. European Grapevine Moth (*Lobesia botrana*)

(b) Area Under Quarantine:

(1) In Napa and Sonoma counties in the area of Yountville, Rutherford and St. Helena; Beginning at the intersection of State Hwy 128 and Deer Park Rd; then, starting northeasterly along Deer Park Rd to its intersection with Sunnyside Rd; then, starting southeasterly along Sunnyside Rd to its intersection with Quail Ln; then, starting northeasterly along Quail Ln to its northernmost point; then, northeasterly along an imaginary line to its intersection with Moore Creek at 38.544751 latitude and -122.381326 longitude; then, starting southerly along Moore Creek to its intersection with Chiles Pope Valley Rd; then, southerly along Chiles Pope Valley Rd to its intersection with Lake Hennessy; then, starting northeasterly along the shore of Lake Hennessy to its intersection with Sage Canyon Creek; then, starting northeasterly along Sage Canyon Creek to its intersection with Fir Canyon Creek; then, starting southeasterly along Fir Canyon Creek to its southeastern most point; then, southwesterly along an imaginary line to an unnamed road at 38.4466822 latitude and -122.2739098 longitude; then southwesterly along the unnamed road to its intersection with Soda Canyon Rd; then, starting southwesterly along Soda Canyon Rd to its intersection with 38.438943 latitude and -122.292900 longitude; then southeasterly along an imaginary line to its intersection with an unnamed road at 38.436983 latitude

and -122.289885 longitude; then, southerly along the unnamed road to its intersection with 38.435817 latitude and -122.289883 longitude; then, southerly along an imaginary line to its intersection with Old Foss Valley Rd and an unnamed road at 38.433143 latitude and -122.289728 longitude; then, starting southerly along the unnamed road to its intersection with 38.427264 latitude and -122.292942 longitude; then, southwesterly along an imaginary line to its intersection with Soda Canyon Rd at 38.418844 latitude and -122.296141 longitude; then, starting southerly along Soda Canyon Rd to its intersection with Chimney Rock Rd; then, starting southwesterly along Chimney Rock Rd to its intersection with Ridge Dr; then, southeasterly along an imaginary line to its intersection with the northernmost point of Loma Vista Dr; then, starting southeasterly along Loma Vista Dr to its intersection with Soda Creek; then, southwesterly along Soda Creek to its intersection with Shady Oaks Dr; then, starting southwesterly along Shady Oaks Dr to its intersection with Silverado Tr; then, northwesterly along Silverado Tr to its intersection Oak Knoll Av; then, starting southwesterly along Oak Knoll Av to its intersection with Big Ranch Rd; then, southeasterly along Big Ranch Rd to its intersection with Oak Knoll Av; then, southwesterly along Oak Knoll Av to its intersection with Solano Av; then southeasterly along Solano Av to its intersection with Orchard Av; then, starting southwesterly along Orchard Av to its intersection with Dry Creek Rd; then, starting northwesterly along Dry Creek Rd to its intersection with an imaginary line at 38.368397 latitude and -122.377388 longitude; then, southwesterly along the imaginary line to its intersection with Mount Veeder Rd at 38.359961 latitude and -122.388304 longitude; then, starting northwesterly along Mount Veeder Rd to its intersection with Lokoya Rd; then, starting northwesterly along Lokoya Rd to its intersection with 38.373888 latitude and -122.431877 longitude; then, northwesterly along an imaginary line to its intersection with the Napa County boundary line at 38.379305 latitude and -122.447894 longitude; then, southwesterly along the Napa County boundary line to its intersection with Lokoya Rd at 38.368632 latitude and -122.457436 longitude; then, starting northwesterly along Lokoya Rd to its intersection with Cavedale Rd; then, starting northeasterly along Cavedale Rd to its intersection with Trinity Rd; then, starting northeasterly along Trinity Rd to its intersection with Dry Creek Rd; then, starting northeasterly along Dry Creek Rd to its intersection with Wall Rd; then, starting northwesterly along Wall Rd to its intersection with the Napa County boundary line; then, starting northeasterly long the Napa County boundary line to its intersection with Timberline Dr and Langtry Rd; then, starting northeasterly along Langtry Rd to its intersection with Spring Mountain Rd; then, starting southeasterly along Spring Mountain Rd to its intersection with the St. Helena city boundary; then, starting northeasterly along the St. Helena city boundary to its intersection with State Hwy 128; then, northwesterly along State Hwy 128 to the point of the beginning.

(2) In Napa and Solano counties in the area of the City of Napa; Beginning at the intersection of Atlas Peak Rd and Westgate Dr; then, starting southeasterly along Westgate Dr to its intersection with Milliken Creek; then, starting easterly along Milliken Creek to its intersection with an imaginary line at 38.368691 latitude and -122.232464 longitude; then, southeasterly along the imaginary line to its intersection with Monticello Rd at 38.358544 latitude and -122.200515; then, southeasterly along an imaginary line to its intersection with 38.337827 latitude and -122.170352 longitude; then, southerly along an imaginary line to its intersection with Wild Horse Valley Rd and the Napa County boundary line; then, southwesterly along an imaginary line to its intersection with the Napa County boundary line at 38.2775149 latitude and -122.1906820 longitude; then, starting southeasterly along the Napa County boundary line to its intersection with an imaginary line at 38.272815 latitude and -122.212282 longitude; then, southwesterly along the imaginary line to its intersection with the boundary line of Skyline County Park at 38.270097 latitude and -122.234236 longitude; then, starting southerly along the boundary line of Skyline County Park to its intersection with Madrone Dr; then, starting easterly along Madrone Dr to its intersection with Cedar Dr; then, northerly along Cedar Dr to its in-

tersection with Imola Av; then, westerly along Imola Av to its intersection with West Imola Av; then, westerly along West Imola Av to its intersection with South Jefferson St; then, northerly along South Jefferson St to its intersection with Jefferson St; then, starting northerly along Jefferson St to its intersection with Trancas St; then, northeasterly along Trancas St to its intersection with Big Ranch Rd; then northerly along Big Ranch Rd to its intersection with an unnamed road at 38.330997 and -122.291274 longitude; then, northeasterly along the unnamed road to its intersection with an imaginary line beginning at 38.332553 latitude and -122.287811 longitude; then, northeasterly along the imaginary line to its intersection with the Napa River at 38.334344 latitude and -122.284101 longitude; then, northeasterly along the Napa River to its intersection with an unnamed road at 38.339669 latitude and -122.286005 longitude; then, easterly along the unnamed road to its intersection with Silverado Tr; then, northerly along Silverado Tr to its intersection with Hardman Av; then northeasterly along Hardman Av to its intersection with an unnamed road at 38.348765 latitude and -122.270314 longitude; then northerly along the unnamed road to its intersection with another unnamed road at 38.353186 latitude and -122.272663 longitude; then northeasterly along the unnamed road to its intersection with Atlas Peak Rd; then northeasterly along Atlas Peak Rd to the point of beginning.

(c) Articles and commodities covered. The following are declared to be hosts and possible carriers of *Lobesia botrana*.

(1) All nursery stock, plants, plant parts, including green waste, and plant products capable of propagation, except seed extracted from fruit of:

Scientific Name	Common Name
<i>Actinidia chinensis</i>	Kiwi fruit or Chinese Gooseberry
<i>Berberis vulgaris</i>	European Barberry
<i>Clematis vitalba</i>	Old-Man's-Beard or Traveller's Joy
<i>Daphne gnidium</i>	Spurge Flax
<i>Dianthus</i> spp.	Carnation
<i>Diospyros kaki</i>	Persimmon
<i>Galium mollugo</i>	False Baby's Breath or White Bedstraw
<i>Hypericum calycinum</i>	St. John's Wort or Aaron's Beard
<i>Ligustrum vulgare</i>	European Privet
<i>Olea europaea</i>	Olive
<i>Prunus</i> spp.	Stone Fruit (e.g. apricot, cherry, plum)
<i>Punica granatum</i>	Pomegranate
<i>Rhus glabra</i>	Smooth Sumac
<i>Ribes</i> spp.	Currant, Gooseberry
<i>Rosmarinus officinalis</i>	Rosemary
<i>Rubus</i> spp.	Blackberry, Dewberry
<i>Silene vulgaris</i>	Bladder Campion
<i>Trifolium pratense</i>	Red Clover
<i>Urginea maritima</i>	Sea squill
<i>Vitis</i> spp.	Grape
<i>Ziziphus jujuba</i>	Jujube

(2) Any other articles which are infested or exposed to infestation by *Lobesia botrana*.

(3) Possible carriers shall include all appliances used in the growing, harvesting, processing and hauling of the host plants and plant parts and any green waste residues including but not limited to tractors, trailers, trucks, planting, picking and pruning equipment and processing machinery and any other article, thing or means of conveyance when it is determined by the Secretary or county agricultural commissioner to present a hazard of spreading live life stages of the *Lobesia botrana*.

(4) Exemptions. The following articles are exempt from the provisions of this subsection:

(A) Seed extracted from fruit;

(B) Privately-owned indoor decorative houseplants; and,

(C) Dying or dead plant material (green waste) that has been processed or handled or treated in a manner approved by the Secretary to eliminate live life stages of the European Grapevine Moth and is moved directly to

a city or county sanitary landfill or State licensed compost facility within the quarantine area.

(d) Restrictions.

(1) Articles and commodities covered in subsection (c)(1), (2) and (3) are prohibited movement within or from the area under quarantine except as provided in (A), (B), (C), (D) or (E) below:

(A) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities originated from a site or facility which is apparently free from European Grapevine Moth.

(B) If accompanied by a certificate issued by an authorized agricultural official affirming that the articles and commodities have been inspected or treated in a manner approved by the Department and are apparently free from European Grapevine Moth.

(C) If purchased at a retail sales location and accompanied by a sales receipt.

(D) If the article or commodity was produced outside the area under quarantine and is being moved through the area under quarantine by direct route and without delay in vehicles or containers which prevent exposure to infestation of the article or commodity to European Grapevine Moth.

(E) If the article or commodity covered is moved under the terms of a special permit as authorized under Title 3, Section 3154 of the California Code of Regulations.

(2) Articles and commodities covered in subsection (c)(3) are prohibited movement within or from the area under quarantine except if cleaned and treated to the satisfaction of the Department or county agricultural commissioner.

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code.

HISTORY

1. New section filed 3-3-2010 as an emergency; operative 3-3-2010 (Register 2010, No. 10). A Certificate of Compliance must be transmitted to OAL by 8-30-2010 or emergency language will be repealed by operation of law on the following day.

Article 5. Miscellaneous Rulings

§ 3550. Plant Products Exempt from Holding for Inspection. [Repealed]

HISTORY

1. Amendment filed 9-19-58 as an emergency; effective upon filing (Register 58, No. 17). For prior history, see Register 56, No. 3.
2. Certificate of Compliance—Section 11422.1, Government Code, filed 11-18-58 (Register 58, No. 22).
3. Amendment filed 3-15-72; effective thirtieth day thereafter (Register 72, No. 12).
4. Amendment filed 5-7-74; effective thirtieth day thereafter (Register 74, No. 19).
5. Amendment filed 10-15-74; effective thirtieth day thereafter (Register 74, No. 42).
6. Repealer filed 3-29-83; effective thirtieth day thereafter (Register 83, No. 14).

§ 3551. Pear Decline Is "Pest." [Repealed]

NOTE: Authority cited: Sections 16 and 100(a)(1), Food and Agricultural Code.

HISTORY

1. New section filed 12-28-60 as an emergency; effective upon filing. Certificate of Compliance—Sec. 11422.1, Government Code, included (Register 61, No. 1).
2. Repealer filed 3-5-71; effective thirtieth day thereafter (Register 71, No. 10).

§ 3552. Hold Used Cotton Machinery for Inspection in San Joaquin Valley Quality Cotton District. [Repealed]

NOTE: Authority cited: Sections 407 and 52901, Food and Agricultural Code. Reference: Sections 52851-52855, 52901, and 52971-52976, Food and Agricultural Code.

HISTORY

1. New section filed 3-25-63; effective thirtieth day thereafter (Register 63, No. 5).
2. Amendment of subsection (c) filed 7-28-77 as organizational and procedural; effective upon filing (Register 77, No. 31).

3. Amendment filed 1-17-80; effective thirtieth day thereafter (Register 80, No. 3).
4. Amendment filed 3-11-92; operative 4-10-92 (Register 92, No. 12).
5. Renumbering of former section 3552 to new section 3821.1 filed 5-7-97; operative 6-6-97 (Register 97, No. 19).

§ 3555. Dissemination of Pests Through the Agency of Appliances. [Repealed]

NOTE: Authority cited: Sections 407 and 5741, Food and Agricultural Code.

HISTORY

1. Amendment filed 8-30-65 as an emergency; effective upon filing (Register 65, No. 16). For prior history see Register 63, No. 18.
2. Certificate of Compliance—Section 11422.1, Government Code, filed 11-10-65 (Register 65, No. 21).
3. Editorial change of cited authority to conform to Food and Agricultural Code, 1967 Stats., c. 15 (Register 68, No. 13).
4. Amendment of subsection (a) and new subsection (e) filed 3-15-72; effective thirtieth day thereafter (Register 72, No. 12).
5. Repealer filed 3-29-83; effective thirtieth day thereafter (Register 83, No. 14).

§ 3556. Dissemination of Weed Pests Through the Movement of Feed Grain.

The Secretary of the California Department of Food and Agriculture designates feed grain as a thing liable to be infested with pests.

Any person receiving or moving feed grain from within the state shall notify the county agricultural commissioner of the arrival of such grain, and hold the same for inspection by the commissioner, without unnecessarily moving or placing such grain where it may grow or be disseminated or contaminate clean grain. The commissioner may waive the requirement of notification of arrival and holding for inspection at destination on shipments which are accompanied by a certificate of cleanliness or the commissioner may waive the requirement of holding uncertified shipments for inspection if any such shipment is destined to a mill or establishment which has been approved by the Secretary or Commissioner as being capable of processing or storing feed grain infested with weed seed pests in such a manner that no contamination of clean grain or dissemination of the pests would result. The Secretary will issue a list of approved mills and establishments showing their locations, weed seed pests each may receive, and the approved methods of handling infested feed grain.

(a) Definitions. As used in this section:

(1) "Feed grain" means the whole seed or seed-like fruits of grain, including wheat, barley, oat, rye, sorghum, and corn, for any use other than planting

(2) "Restricted weed seed pests liable to be disseminated through the movement of feed grain" means viable seed or propagule of the following weeds: *Acroptilon repens*, Russian knapweed; *Alhagi maurorum*, camelthorn; *Cardaria chalapensis*, lens-podded hoary cress; *Cardaria draba*, heart-podded hoary cress; *Cardaria pubescens*, globe-podded hoary cress; *Centaurea solstitialis*, yellow starthistle; *Cirsium avense*, Canada thistle; *Convolvulus arvensis*, field bindweed; *Elytrigia repens*, quackgrass; *Euphorbia esula*, leafy spurge; *Gaura coccinea*, scarlet gaura; *Gaura drummondii*, scented gaura; *Gaura sinuata*, wavyleaf gaura; *Helianthus ciliaris*, blueweed; *Lepidium latifolium*, perennial pepper-cress; *Rorippa austriaca*, Austrian fieldcress; *Salvia virgata*, meadow sage; *Setaria faberi*, giant foxtail; *Solanum carolinense*, Carolina horse nettle; *Solanum elaeagnifolium*, white horsenettle; *Sonchus arvensis*, perennial sowthistle; *Sorghum halepense*, Johnsongrass.

(b) Standards of Cleanliness for Feed Grain. To be eligible for certification under provisions of this section, feed grain shall be free of mature seed or propagule of restricted weed seed pests liable to be disseminated through the movement of feed grain, as listed in subsection (a)(1), except that a tolerance shall be allowed of up to five (5) seeds each of Johnsongrass, field bindweed, and yellow starthistle, per pound of feed grain examined.

(c) Certificates of Cleanliness may be issued by the commissioner whenever adequate inspection has been made of the field or when samples are drawn from any conveyance, mill, or storage facility and it has been determined that the feed grain meets the standard of cleanliness.

Continued identity of all such certified feed grain shall be maintained to prevent commingling with uninspected or infested feed grain.

(d) Inspection Counties. Any commissioner who elects to accept certificates of cleanliness issued in compliance with this section, shall so notify the Secretary in writing. The Secretary will issue a list of counties where certificates of cleanliness will be accepted.

(e) Disposition of Infested Shipments. Any shipment of feed grain found to be infested with the seed of any pest not of common occurrence in the county or locality into which such shipment is brought is subject to the provisions of Sections 6341 to 6344, inclusive, of the Food and Agricultural Code. With the approval of the commissioner at destination, such shipments may be allowed to move in quarantine to an approved mill or establishment.

NOTE: Authority cited: Sections 407 and 5721, Food and Agricultural Code. Reference: Sections 5721 and 6501, Food and Agricultural Code.

HISTORY

1. Amendment of section and filed 1-13-78; effective thirtieth day thereafter (Register 78, No. 2). For prior history, see Register 68, No. 13.
2. Repealer and new section filed 3-29-83; effective thirtieth day thereafter (Register 83, No. 14).
3. Amendment filed 5-7-97; operative 6-6-97 (Register 97, No. 19).

§ 3557. Seed Screenings and Cleanings.

The Secretary of the Department of Food and Agriculture promulgates this regulation pertaining to seed screenings and cleanings for the purpose of preventing the dissemination of the seed of any pest through the movement of seed screenings or cleanings from crop seed.

(a) Definitions. As used in this Section:

(1) "Screenings" means seed screenings or cleanings from crop seeds, and includes all products or materials removed from crop seed by any means whatsoever.

(2) "Pest" means any form of vegetable life that is or is liable to be dangerous or detrimental to the agricultural industry of the state.

(3) "Crop seed" means the seed or seed-like fruit of grain, beans, flax, beets, onions or any other crop, whether or not intended for planting purposes.

(4) "Processing" means cleaning, grinding or other treatment, including destruction, of screenings to prevent the dissemination of the seed of any pest or render the seed of any pest present or liable to be present incapable of reproduction.

(b) Inspection.

(1) If upon inspection the county agricultural commissioner finds the screenings to be free of the seed of any pest and the screenings will be utilized in his county, he shall release the screenings with an inspection and release stamp. The lot of screenings shall be marked or segregated in order to maintain its identity until final disposition.

(2) If upon inspection the commissioner finds the screenings to contain the seed of any pest, he shall notify the person in possession that such screenings are subject to the processing requirements as set forth in Section 7571 to 7581, inclusive, Food and Agricultural Code. If the grower of the crop seed from which the screenings were removed elects to have the screenings returned, they may be returned to the growing origin under permit as provided in subsection (d)(1).

(c) Approved Processing Mills or Establishments.

(1) Any person operating a mill or establishment which processes screenings containing the seed of any pest may apply to the commissioner for approval of the equipment and operating procedures. Approval for processing shall be granted whenever the commissioner determines that the equipment is adequate and is operated in such a manner, to handle screenings without risk of disseminating the seed of any pest or to render the seed of any pest incapable of reproduction.

(2) Approval may be withdrawn at any time upon determination by the commissioner that the terms of approval are not complied with.

(3) The Commissioner shall list with the Secretary, all mills and establishments for which approval has been granted, together with the conditions, if any, of such approval, and shall notify the Secretary of any approval withdrawn, and the reasons therefore. The Secretary will issue a list of mills and establishments approved by county agricultural commis-

sioners showing their locations and the source of screenings and cleanings approved for each listing.

(d) Permits.

(1) Applications for permits to move screenings containing the seed of any pest for destruction, processing or return to growing origin shall be made to the Commissioner of the county in which the screenings are located. No permit shall be issued for movement of screenings into another county except to processing mills and establishments approved by the commissioner of the county of destination, as provided in subsection (c).

(2) Permits shall be in writing, listing the name and address of the permittee, owner or person in possession of the screenings, and the name of the approved processing establishment receiving the screenings. A statement naming the pest or pests present and any other conditions governing the use of the permit such as tightly closed containers, holding for destination inspection, and expiration date may be included. The original of each permit shall be signed by the enforcing officer.

NOTE: Authority cited: Sections 407 and 7502, Food and Agricultural Code. Reference: Sections 7502, 7571, 7572, 7573, 7575 and 7576, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (b) filed 7-28-77 as organizational and procedural; effective upon filing (Register 77, No. 31). For prior history, see Register 68, No. 25.
2. Repealer and new section filed 3-29-83; effective thirtieth day thereafter (Register 83, No. 14).
3. Amendment filed 5-7-97; operative 6-6-97 (Register 97, No. 19).

§ 3558. Insects Which May Be Imported or Shipped Into or Within California Without a Permit.

Section 6305 of the Food and Agricultural Code requires persons to obtain a permit from the director or the United States Department of Agriculture to import into, or ship or transport within, the state live insects except for certain exemptions. One of these exemptions is for beneficial or useful insects of common occurrence in the state. To identify which beneficial insects do not require a permit to import into, or ship or transport within, the state the following lists are provided. However, as with all insect shipments they shall be rejected when the insects are moved in conjunction with host plants or other host organisms when such hosts would normally be rejected if moving independently.

(a) Insects for which a permit is not required:

Acmon blue (*Plebejus acmon*)
 Alderflies, dobsonflies (*Megaloptera*)
 Alfalfa butterfly (*Colias eurytheme*)
 Alkali bees (*Nomia melanderi*)
 Almond moth (*Cadra cautella*)
 American cockroach (*Periplaneta americana*)
 American painted lady (*Vanessa virginiensis*)
 Angelwinged katydid (*Microcentrum rhombifolium*)
 Angoumois grain moth (*Sitotroga cerealella*)
 Anise swallowtail (*Papilio zelicaon*)
 Antlions (*Myrmeleontidae*)
 Argentine ant (*Linepithema humile*)
 Armyworm (*Pseudaletia unipunctata*)
 Backswimmers (*Notonectidae*)
 Beet armyworm (*Spodoptera exigua*)
 Black blow fly (*Phormia regina*)
 Black cutworm (*Agrotis ipsilon*)
 Bluebottle fly (*Calliphora vicina*)
 Buckeye butterfly (*Precis coenia*)
 Caddisflies (*Trichoptera*)
 Cat flea (*Ctenocephalides felis*)
 California dogface butterfly (*Colias [Zerene] eurydice*)
 California ringlet (*Coenonympha californica*)
 California sister (*Adelpha bredowii*)
 Carolina mantid (*Stagomantis carolina*)
 Ceanothus silk moth (*Hyalophora euryalis*)
 Chalcedon checkerspot (*Euphydryas chalcedona*)
 Checkered white (*Pieris [Pontia] protodice*)

Chinese mantid (*Tenodera aridifolia sinensis*)
 Cigarette beetle (*Lasioderma serricornes*)
 Clodius Parnassian (*Paranassius clodius*)
 Clouded sulfur (*Colias philodice*)
 Cloudless sulfur (*Phoebis sennae*)
 Codling moth (*Cydia pomonella*)
 Common black field cricket (*Gryllus* sp.)
 Common checkered skipper (*Pyrgus communis*)
 Confused flour beetle (*Tribolium confusum*)
 Convergent ladybird beetle (*Hippodamia convergens*)
 Corn earworm (*Helicoverpa zea*)
 Damselflies, dragonflies (*Odonata*)
 Darkling beetles (*Eleodes* spp.)
 Dermestid beetles (*Anthrenus flavipes*, *Anthrenus scrophulariae*, *Attagenus megatoma*)
 Diamondback moth (*Plutella xylostella*)
 Diplurans (*Diplura*)
 Dobsonflies (*Corylidae*)
 Dog flea (*Ctenocephalides canis*)
 Embiids (*Embiopoda*)
 European earwig (*Forficula auricularia*)
 European mantid (*Mantis religiosa*)
 Fall armyworm (*Spodoptera frugiperda*)
 Field crescent (*Phyciodes campestris*)
 Firebrat (*Thermobia domestica*)
 Flesh fly (*Sarcophaga haemorrhoidalis*)
 German cockroach (*Blattella germanica*)
 Giant black water beetle (*Hydrophilus triangularis*)
 Giant lacewings (*Polystoechotidae*)
 Giant roach (*Blaberus giganteus*)
 Green lacewing (*Chrysopa carnea*)
 Green peach aphid (*Myzus persicae*)
 Greenbottle flies (*Phaenicia sericata*, *P. pallens*=*P. cuprina*)
 Greenhouse thrips (*Heliothrips haemorrhoidalis*)
 Greenhouse whitefly (*Trialeurodes vaporariorum*)
 Gulf fritillary (*Agraulis vanillae*)
 Harlequin bug (*Murgantia histrionica*)
 Harvester ants (*Pogonomyrmex californicus*)
 Harvestman (*Phalangida*)
 Hissing cockroach (*Gromphadorhina portentosa*, *Gromphadorhina* spp.)
 House cricket (*Acheta domestica*)
 House fly (*Musca domestica*)
 Human flea (*Pulex irritans*)
 Imported cabbage butterfly (*Artogeia rapae*)
 Indian meal moth (*Plodia interpunctella*)
 Iris mantid (*Iris oratoria*)
 Jerusalem crickets (*Stenopelmatus* spp.)
 Large milkweed bug (*Oncopeltus fasciatus*)
 Leaf cutter bees (*Megachile rotundata*)
 Limbatid mantid (*Stagomantis limbata*)
 Little house fly (*Fannia canicularis*)
 Lorquin's admiral (*Limenitis [Basilarchia] lorquini*)
 Mayflies (*Ephemeroptera*)
 Meal moth (*Pyralis farinalis*)
 Mealworms (*Tenebrio molitor* and *T. obscurus*)
 Mealybug destroyer (*Cryptolaemus montrouzieri*)
 Mediterranean flour moth (*Anagasta kuehniella*)
 Milbert's tortoise shell (*Aglaia milberti*)
 Millipedes (*Diplopoda*)
 Mourning cloak butterfly (*Nymphalis antiopa*)
 Mylitta crescent (*Phyciodes mylitta*)
 Naval orangeworm (*Amyelois transitella*)
 Orange dog butterfly (*Papilio cresphontes*)
 Oriental cockroach (*Blatta orientalis*)
 Painted lady butterfly (*Vanessa cardui*)

Pale swallowtail (*Papilio eurymedon*)
 Pauropods (*Pauropoda*)
 Pine white (*Neophasia menapia*)
 Pipevine swallowtail (*Battus philenor*)
 Polyphemus silkworm (*Antheraea polyphemus*)
 Pomace flies (*Drosophila* spp.)
 Potato tuberworm (*Phthorimaea operculella*)
 Proturans (*Protura*)
 Psuedoscorpions (*Chelonethida*)
 Queen (*Danaus gilippus*)
 Red admiral butterfly (*Vanessa atalanta*)
 Rock crawlers (*Grylloblattodea*)
 Sara orangetip (*Anthocaris sara*)
 Satyr anglewing (*Polygonia satyrus*)
 Scorpionflies (*Mecoptera*)
 Symphids (*Symphyla*)
 Silkworm (*Bombyx mori*)
 Silvertfish (*Lepisma saccharina*)
 Small milkweed bug (*Lygaeus kalmii*)
 Snakeflies (*Raphidoptera*)
 Stable fly (*Stomoxys calcitrans*)
 Stag beetles (*Lucanidae*)
 Stoneflies (*Plecoptera*)
 Tenodera mantid (*Tenodera augustipennis*)
 Timemas (Timemidae)
 Tobacco hornworm (*Manduca sexta*)
 Tomato hornworm (*Manduca quinquemaculata*)
 Twisted wing parasites (Strepsiptera)
 Two-tailed swallowtail (*Papilio multicaudata*)
 Velvent ants (Mutillidae)
 Walnut husk fly (*Rhagoletis completa*)
 Water boatman (Corixidae)
 Water striders (*Gerris* spp.)
 Waterbugs (*Belostomatidae*)
 Wax worm or bee moth (*Galleria mellonella*)
 Webbing clothes moth (*Tineola biselliella*)
 West coast lady (*Vanessa annabella*)
 Western tailed blue (*Everes amyntula*)
 Western tiger swallowtail (*Papilio rutulus*)
 Whip scorpions (*Amblypygi*, *Microthelyphonida*, *Pedipalpida*, and *Schizopeltida*)
 Whirligig beetles (*Gyrinidae*)
 White lined sphinx (*Hyles lineata*)
 Wind scorpions (*Solpugida*)
 Zephyr angelwing (*Polygonia zephyrus*)
 Zorapterans (*Zoraptera*)

(b) Groups of insects for which a permit is not required when the insect species under consideration is of common occurrence in California.

- (1) Predacious species of beetles of the family Coccinellidae.
- (2) Predacious species of flies of the family Syrphidae.
- (3) Predacious species of Neuropterous insects of the family Chrysopidae.
- (4) Parasitic species of flies of the family Tachinidae.
- (5) Parasitic species of Hymenopterous insects of the families: Ichneumonidae, Braconidae, Aphelinidae, Chalcididae, Scelionidae, and Trichogrammatidae.
- (6) Insects that have been introduced and previously released in California for biological control of insect, weed, or other types of pests.

NOTE: Authority cited: Sections 407 and 5302, Food and Agricultural Code. Reference: Section 6305, Food and Agricultural Code.

HISTORY

1. New section filed 4-3-74; effective thirtieth day thereafter (Register 74, No. 14).
2. Repealer and new section filed 3-29-83; effective thirtieth day thereafter (Register 83, No. 14).
3. Amendment filed 5-7-97; operative 6-6-97 (Register 97, No. 19).

4. Editorial correction of subsection (a)(24) (Register 2004, No. 27).

5. Amendment of subsection (a), including removal of numbered subsection designators, and amendment of subsection (b)(5) filed 7-2-2004; operative 8-1-2004 (Register 2004, No. 27).

§ 3559. Garlic Production in Mono County.

(a) The director finds that certain pests of garlic (*Allium sativum*), namely stem and bulb nematode (*Ditylenchus dipsaci*), white rot fungus (*Sclerotium cepivorum*), garlic yellow stripe virus, and pink root (*Pyrenochaeta terrestris*), are not known to occur in the garlic production areas of Mono County specified in (b).

(b) A quarantine area is established, for the purpose of maintaining the pest cleanliness of garlic plantings in that area, which, for purposes of this section, is denominated as follows:

(1) "Antelope Valley": Beginning at the intersection of the California-Nevada State Line and the southern portion of Topaz Lake; then southeasterly along said state line to Eastside Road; then southwesterly along Eastside Road to Interstate Highway 395; then westerly along an imaginary line to the border of Toiyabe National Forest; then northerly along an imaginary line to T9N; then easterly along T9N to Interstate Highway 395; then northerly along said highway to Topaz Lake; then southeasterly along Topaz Lake to the point of beginning;

(2) "Benton, Hammil, and Chalfant Valleys": Beginning at the intersection of State Highway 6 and the California-Nevada State Line, then southeasterly along said state line to its intersection with the Inyo National Forest Boundary, then southerly and easterly along said boundary to its intersection with the Inyo-Mono County Line, then westerly along said county line to its intersection with Fish Slough Road, then northerly along said road to its intersection with Black Rock Mine Road, then northwesterly along Black Rock Mine Road to its intersection with Joe Maive Road, then northwesterly along said road to its intersection with Yellow Jacket Road, then northerly along Yellow Jacket Road to its intersection with State Highway 120, then due north along an imaginary line to the point it intersects the Inyo National Forest Boundary, then northwesterly along said boundary to its intersection with the California-Nevada State Line, then southeasterly along said line to the point of beginning.

(c) No garlic plant or part thereof shall be planted or maintained in any state of cultivation in the quarantine area unless a written application has been received and a permit has been issued by the director or the Agricultural Commissioner for Mono County.

Such permit shall be issued provided the garlic is the progeny of plants tested by the University of California and found free of the garlic yellow stripe virus; has been produced under the provisions of Section 3044 et seq., "California Certified Seed Garlic," or is accompanied by a certificate issued by a State or county agricultural regulatory official verifying the garlic is of equivalent pest status as garlic produced under said provisions; and provided the director or commissioner determines the garlic covered by the permit is free of the pests specified in subsection (a) and other serious pests of garlic.

(d) No person shall bring into the quarantine area any machinery, parts of machinery, tools, equipment, or other appliances which have been used in garlic fields outside the quarantine area unless those appliances have been treated for garlic pests which may be carried on them. The treatment shall include a high-pressure steam cleaning or washing with water under pressure to remove all soil and debris, followed by treatment with a fungicide.

The agricultural commissioner shall be immediately notified of the arrival in the quarantine area of such appliances which shall be held for inspection by the commissioner before use in the quarantine area. If, upon inspection, soil or debris is detected, the appliances shall be treated, as specified above, or removed from the quarantine area.

NOTE: Authority cited: Sections 407 and 5302, Food and Agricultural Code. Reference: Section 5302, Food and Agricultural Code.

HISTORY

1. New section filed 1-12-84; effective thirtieth day thereafter (Register 84, No. 2).
2. Amendment filed 8-16-85; effective thirtieth day thereafter (Register 85, No. 33). analysis different Group 5. Insect Pest Control

Article 6. Airport and Marine Terminal Inspection.

§ 3560. Facility Service Charges and User Fees.

(a) Pursuant to sections 5351 and 5353(a), each air carrier or foreign air carrier shall pay a service charge of forty-three dollars (\$43) to the Secretary upon the initial landing in California of each flight of the carrier which originated outside the United States from a country to which a current United States Department of Agriculture quarantine or California Department of Food and Agriculture quarantine is applicable, or which made an intermediate stop on that flight in such a country. Any carrier may apply for an exemption from Department inspection and payment of the fee as to particular flights on the basis that the aircraft's operations and other inspections and certifications provide adequate compliance with the objectives of the Act.

(b) Pursuant to sections 5352 and 5353(b), each marine carrier engaged in foreign commerce shall pay a user fee of one hundred dollars (\$100) to the Secretary upon the initial arrival in California of a carrier's vessel on a voyage which originated outside the United States from a country to which a current United States Department of Agriculture quarantine or California Department of Food and Agriculture quarantine is applicable, or which made an intermediate stop on that voyage in such a country. Any carrier may apply for an exemption from Department inspection and payment of the fee as to particular voyages on the basis that the carrier's operations and other inspections and certifications provide adequate compliance with the objectives of the Act.

(c) Each air and marine carrier subject to the above charges or fees shall file a return quarterly in the form prescribed by the Secretary, verified by the company officer primarily responsible for supervising the preparation of the return and assuring its accuracy. The return accompanied by full payment, shall be timely filed so as to be received by the Cashier of the California Department of Food and Agriculture within thirty (30) days following the quarters ending on March 31, June 30, September 30 and December 31. Returns not received by such dates, or received without required information and verification, shall be subject to the penalty prescribed by section 5353, subsection (d).

NOTE: Authority cited: Sections 407 and 5351 through 5353, Food and Agricultural Code. Reference: Sections 5350 through 5353, Food and Agricultural Code.

HISTORY

1. New section submitted to OAL for printing only pursuant to Food and Agricultural Code section 5353(h) filed 3-15-91; operative 4-1-91 (Register 91, No. 15).
2. Amendment filed 12-22-94; operative 1-1-95. Submitted to OAL for printing only (Register 94, No. 51).

Subchapter 5. Insect Pest Control

§ 3580. Citrus Whitefly Districts. [Repealed]

NOTE: New authority cited: Sections 407 and 5901, Food and Agricultural Code. Reference: Sections 5901-5907, Food and Agricultural Code.

HISTORY

1. Amendment filed 2-9-68 as an emergency; effective upon filing (Register 68, No. 6). For prior history, see Register 67, No. 18.
2. Certificate of Compliance—Section 11422.1, Govt. Code, filed 3-19-68 (Register 68, No. 12).
3. Repealer filed 6-4-76; effective thirtieth day thereafter (Register 76, No. 23).

Article 1. Pest Control Areas

§ 3581. Sweetpotato Weevil Control Area.

(a) Proclamation of Control Area. That portion of the State of California described as follows, within which a certain pest, sweetpotato weevil (*Cylas formicarius elegantulus*), is known to exist or which has been exposed to infestation, is hereby proclaimed to be a control area with respect to said pest:

(1) Control Area. That portion of San Diego County bounded by a line drawn as follows: Beginning at the intersection of Sunset Cliffs Boulevard and Interstate Highway 8; then, easterly along Interstate Highway 8 to its intersection with Japatul Road; then, southwesterly along said road to its intersection with Lyons Valley Road; then, southwesterly along Lyons Valley Road to its intersection with Barrett Lake Road; then, southeasterly and southerly along Barrett Lake Road to its intersection with State Highway 94; then, southeasterly along said highway to its intersection with State Highway 188; then, southerly along State Highway 188 to its intersection with the United States-Mexico border; then, westerly along said border to its intersection with the Pacific Ocean coastline; then, northerly along said coastline to its intersection with the San Diego River; then, easterly along said river to its intersection with Sunset Cliffs Boulevard; then, southwesterly along said boulevard to the point of beginning.

(b) Hosts. Sweet potato plants and all plant parts except seed and including vines, draws, and slips, and sweet potato roots, also called yams, camote, batatas, boniatos, buniatos, and moniato (*Ipomoea batatas*), and morning-glory plants (*Ipomoea* spp., *Calystegia* spp., and *Convolvulus* spp.).

(c) Possible Carriers. Possible carriers include all appliances used in the growing, harvesting, processing, storage, and movement of hosts, including but not limited to field bins, nursery and production growing areas, storage areas and facilities, trucks, tractors, harvesting equipment, processing equipment and facilities, and any other grounds, appurtenances, or things which the Department determines to be capable of harboring or spreading any stage of sweetpotato weevil.

(d) Means and Methods. The following means and methods may be used by the Department in the control or eradication of sweetpotato weevil within the control area:

(1) The search for all life stages of sweetpotato weevil by visual inspection, the use of traps, or any other means.

(2) The use of insecticides, chemicals, or other materials as fumigant, spray, dust, bait, or in any other form as often as necessary to effect control or eradication.

(3) The cleaning and treatment of possible carriers.

(4) The removal and destruction of hosts if the action is the only practical way of controlling or eliminating the infestation.

(5) The removal and immediate destruction of infested host material.

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5321 and 5322, Food and Agricultural Code.

HISTORY

1. New article 1 (section 3581) and section filed 5-30-97 as an emergency; operative 5-30-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-29-97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-30-97 order transmitted to OAL 9-23-97 and filed 10-1-97 (Register 97, No. 40).

Article 2. Pest Eradication Areas

§ 3585. Western Grapeleaf Skeletonizer Eradication Area. [Repealed]

HISTORY

1. Amendment filed 4-30-75; effective thirtieth day thereafter (Register 75, No. 18). For prior history, see Register 75, No. 1.
2. Repealer filed 12-1-75; effective thirtieth day thereafter (Register 75, No. 51).

§ 3586. Western Cherry Fruit Fly Eradication Area. [Repealed]

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5322 and 5761, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (d) filed 7-28-77 as organizational and procedural; effective upon filing (Register 77, No. 31). For prior history, see Register 59, No. 1.
2. Amendment filed 3-9-83; effective thirtieth day thereafter (Register 83, No. 11).
3. Repealer filed 9-28-84; effective thirtieth day thereafter (Register 84, No. 39).

§ 3587. Hall's Scale Eradication Area. [Repealed]

NOTE: Authority cited: Sections 16 and 108, Agricultural Code.

HISTORY

1. New section filed 9-23-52; effective thirtieth day thereafter (Register 29, No. 7).
2. Repealer filed 11-2-67; effective thirtieth day thereafter (Register 67, No. 44).

§ 3588. Mexican Fruit Fly Eradication Area.

(a) Proclamation of Eradication Area. All of the Counties of Los Angeles, Riverside, Sacramento, San Bernardino, San Diego and Yolo, State of California, within which the Mexican fruit fly, (*Anastrepha ludens*), is known to exist, are hereby proclaimed to be an eradication area with respect to said pest. As such, it is amenable to the provisions of article 4 (sections 5761-5764) of chapter 8, part 1, division 4 of the Food and Agricultural Code of California.

(b) Hosts. All citrus fruits except lemons and sour limes; mangoes, sapotas (including sapodillas and the fruit of all members of the family Sapotaceae, and of the genus Casimiroa and all other fruits commonly called sapotas or sapotes) apples, apricots, ciruelas, guavas, mameys, peaches, pears, plums, pomegranates, quinces, and fruits of species of the genus Sargentia.

(c) Means and Methods. The following means and methods may be used in the eradication and control of said pest in said area.

(1) The use of insecticides, chemicals, or other materials as spray (including soil spray treatments), dust, bait, or in any other form as often as necessary to effect control or eradication.

(2) The removal and destruction of hosts and of the fruit of such hosts if such action is the only practical way of eliminating the infestation.

(3) The search for all stages of Mexican fruit fly by visual inspection, the use of traps, or any other means.

(4) The removal and destruction of abandoned or unwanted plants bearing or capable of bearing hosts.

(5) The importation, rearing, or liberation of sterile forms of the Mexican fruit fly.

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5761-5764, Food and Agricultural Code.

HISTORY

1. New section filed 11-14-89 as an emergency; operative 11-14-89 (Register 89, No. 46). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-14-90. For prior history, see Registers 89, No. 11 and 87, No. 27.
2. Certificate of Compliance transmitted to OAL 3-13-90 and filed 4-12-90 (Register 90, No. 16).
3. Amendment of subsection (a) filed 5-14-90 as an emergency; operative 5-14-90 (Register 90, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9-15-90.
4. Certificate of Compliance as to 5-14-90 order transmitted to OAL 9-11-90 and filed 10-4-90 (Register 90, No. 46).
5. Amendment of subsection (a) filed 8-31-99 as an emergency; operative 8-31-99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-29-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-31-99 order transmitted to OAL 12-27-99 and filed 1-21-2000 (Register 2000, No. 3).
7. Amendment of subsection (a) filed 8-27-2009 as an emergency; operative 8-27-2009 (Register 2009, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-23-2010 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-27-2009 order transmitted to OAL 2-18-2010 and filed 3-24-2010 (Register 2010, No. 13).

§ 3589. Japanese Beetle Eradication Area.

(a) Proclamation of Eradication Area. That portion of the State of California described as follows, within which a certain pest, Japanese beetle, *Popillia japonica*, is known to exist, is hereby proclaimed to be an eradication area with respect to said pest: The counties of Los Angeles, Merced, Orange, Riverside, San Bernardino and San Diego.

(b) Hosts and Possible Carriers. Any and all premises, plants, plant products, soil, sod and any other articles or things which are infested or exposed to infestation by the Japanese beetle.

(c) Means and Methods. The following means and methods may be used in the control and eradication of said pest within said area:

(1) The use of insecticides, chemicals, or other materials as spray, dust, bait or in any other form as often as necessary to effect control or eradication.

(2) The removal and destruction of hosts if such action is the only practical way of eliminating the infestation.

(3) The searching for all stages of Japanese beetle by visual inspection, the use of traps, or any other means.

(4) The removal and destruction of abandoned or unwanted hosts in any stage of development.

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5322, 5761, 5762 and 5763, Food and Agricultural Code.

HISTORY

1. New section filed 8-15-73 as an emergency; effective upon filing (Register 73, No. 33). For prior history, see Register 67, No. 44.
2. Certificate of Compliance filed 11-9-73 (Register 73, No. 45).
3. Repealer filed 6-4-76; effective thirtieth day thereafter (Register 76, No. 23).
4. New section filed 7-1-83 as an emergency; effective upon filing (Register 83, No. 29). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-29-83.
5. Certificate of Compliance as to 7-1-83 order transmitted to OAL 10-18-83 and filed 11-14-83 (Register 83, No. 47).
6. Editorial correction of subsection (c)(1) (Register 95, No. 40).
7. Amendment of subsection (a) filed 4-24-97; operative 5-24-97 (Register 97, No. 17).
8. Amendment of subsection (a) and amendment of NOTE filed 7-3-2006 as an emergency; operative 7-3-2006 (Register 2006, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-31-2006 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-3-2006 order transmitted to OAL 9-26-2006 and filed 10-5-2006 (Register 2006, No. 40).
10. Amendment of subsection (a) filed 7-6-2007 as an emergency; operative 7-6-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 1-2-2008 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (a) filed 7-23-2007 as an emergency; operative 7-23-2007 (Register 2007, No. 30). A Certificate of Compliance must be transmitted to OAL by 1-21-2008 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 7-6-2007 order transmitted to OAL 10-9-2007 and filed 11-14-2007 (Register 2007, No. 46).
13. Certificate of Compliance as to 7-23-2007 order transmitted to OAL 10-23-2007 and filed 12-6-2007 (Register 2007, No. 49).
14. Amendment filed 6-30-2008 as an emergency; operative 6-30-2008 (Register 2008, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-29-2008 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (a) filed 8-1-2008 as an emergency; operative 8-1-2008 (Register 2008, No. 31). A Certificate of Compliance must be transmitted to OAL by 1-28-2009 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 6-30-2008 order transmitted to OAL 10-31-2008 and filed 12-10-2008 (Register 2008, No. 50).
17. Certificate of Compliance as to 8-1-2008 order transmitted to OAL 11-26-2008 and filed 1-12-2009 (Register 2009, No. 3).

§ 3589.1. Whitefringed Beetle Eradication Area.

(a) Proclamation of Eradication Area. That portion of the State of California described as follows, within which a certain pest, whitefringed beetle, *Graphognathus leucoloma*, is known to exist, is hereby proclaimed to be an eradication area with respect to said pest:

The entire County of San Bernardino.

(b) Hosts and Possible Carriers. Any and all premises, plants, plant products, soil, sod and any other articles or things which are infested or exposed to infestation by the whitefringed beetle.

(c) Means and Methods. The following means and methods may be used in the control and eradication of said pest within said area:

(1) The use of insecticides, chemicals, or other materials as spray, dust, bait or in any other form as often as necessary to effect control or eradication.

(2) The removal and destruction of hosts if such action is the only practical way of eliminating the infestation.

(3) The searching for all stages of whitefringed beetle by visual inspection, the use of traps, or any other means.

(4) The removal and destruction of abandoned or unwanted hosts in any stage of development.

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5761-5763, Food and Agricultural Code.

HISTORY

1. New section filed 8-18-88 as an emergency; operative 8-18-88 (Register 88, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-16-88.

§ 3589.2. Sweet Potato Weevil Eradication Area.**[Repealed]**

NOTE: Authority cited: Sections 407 and 5322, Food and Agricultural Code. Reference: Sections 5761-5763, Food and Agricultural Code.

HISTORY

1. New section filed 3-9-93 as an emergency; operative 3-9-93 (Register 93, No. 11). A Certificate of Compliance must be transmitted to OAL 7-7-93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-9-93 order transmitted to OAL 6-17-93 and filed 7-19-93 (Register 93, No. 30).
3. Repealer filed 6-30-94 as an emergency; operative 6-30-94 (Register 94, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-28-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-30-94 order transmitted to OAL 10-12-94 and filed 11-15-94 (Register 94, No. 46).
5. Editorial correction of HISTORY 3 (Register 94, No. 46).

§ 3590. Pink Bollworm Eradication Area.

(a) Proclamation of Eradication Area. That portion of the State of California described as follows within which pink bollworm (*Pectinophora gossypiella*) is known to exist is hereby declared to be an eradication area.

The entire counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Riverside, San Benito, San Bernardino, San Diego, and Tulare.

(b) Definition. The following definitions are applicable to this section.

(1) Pest. Pink bollworm (*Pectinophora gossypiella*).

(2) Hosts. Cotton (*Gossypium*), okra (*Hibiscus esculentus*), kenaf (*Hibiscus cannibinus*) plants and plant parts and any crop residues thereof or any other plant which by investigation is shown to be capable of sustaining pink bollworm in any stage of development.

(3) Possible Carriers. Possible carriers shall include all appliances used in the growing, harvesting, processing and hauling of seed cotton, cottonseed or cotton by-products including but not limited to tractors, trailers, trucks, planting, picking and shredding equipment, cotton gin and processing machinery, the grounds and appurtenances thereto and any lands where host plants are growing or were grown during the past

season, or any other thing which by investigation is shown to be capable of harboring or spreading any stage of the pink bollworm. When the Director or Commissioner deems it necessary, no person shall move any vehicle, appliance, plant or plant parts or thing that is restricted in the Pink Bollworm Eradication Area except under permit issued by the Commissioner.

(c) Implementing Procedures. In controlling pink bollworm of cotton, Agricultural Commissioners shall be responsible to the Director and shall carry out in their counties programs prescribed by the Director. The Commissioner or the Director may elect, as necessary, to implement some or all of the control methods stated in paragraph (d) and may require persons in possession of property upon which cotton is growing or stored or which contain other hosts of pink bollworm, to use these control methods. Host plants on such property which are not brought into compliance as required, and so maintained, shall be deemed a public nuisance and subject to abatement procedures at the expense of the owner or person in possession.

(d) Control Methods

(1) The repeated application of insecticidal or herbicidal sprays or dusts or biological agents by approved methods to host plants or possible carriers capable of harboring or spreading the pink bollworm.

(2) "Control Methods" and "Requirements for Further Planting" as stated in Section 3595.

(3) Visual or mechanical survey to establish the efficacy of treatments and to determine further spread of pink bollworm.

(4) Cleanup or treatment of all cotton production and harvesting appliances and farm sites.

(5) Continuous processing or treatment of gin trash through approved insect-killing fans or other approved methods.

(6) Closure of cotton gins followed by cleanup or treatment by approved methods of said gins and gin yards.

(7) Tarping or construction of all trucks, trailers and other appliances hauling unprocessed seed cotton, contaminated cottonseed or unprocessed gin trash to or from cotton gins, or elsewhere, to prevent spillage or blowout along roads.

(8) Registration of cotton production equipment including, but not limited to, planters, pickers, tractors, cotton trailers and shredding equipment.

[The next page is 340.13.]

the charter school has a guarantor, the review may include a request of updates of any information that was provided by the guarantor in connection with the charter school's preliminary application, as described in Section 10159.

NOTE: Authority cited: Section 17078.57, Education Code. Reference: Sections 17078.53 and 17078.57, Education Code.

HISTORY

1. New section filed 3-29-2004 as an emergency pursuant to Education Code section 17078.57(b); operative 3-29-2004 (Register 2004, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-27-2004 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-19-2004 as an emergency pursuant to Education Code section 17078.57(b); operative 7-27-2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-19-2004 order transmitted to OAL 11-8-2004 filed 12-23-2004 (Register 2004, No. 52).

Article 2. 2004 and 2009 State Charter School Facilities Incentive Grants Programs

§ 10175. Purpose.

This Article implements the California School Finance Authority's administration of the grant(s) received under the U. S. Department of Education, State Charter School Facilities Incentive Grants Program (CFDA #84.282D) which provides per-pupil facilities aid for California charter school pupils.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New article 2 (sections 10175-10191) and section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 10175-10191) and section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
5. Amendment of article heading and section filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10176. Definitions.

For the purposes of this article, the words and phrases defined in section 17078.52 of the Education Code shall have the same meaning as described therein. In addition, the following words and phrases shall have the meaning as described below:

- (a) "Academic Performance Index Growth" shall mean the Growth API summarizing a school's performance on the Standardized Testing and Report Program and California High School Exit Examination tests, as reported by the California Department of Education.
- (b) "Adequate Yearly Progress" shall mean the AYP criteria required under the No Child Left Behind Act of 2001 for identifying schools that are making adequate yearly progress.
- (c) "Applicant" shall mean the charter school or educational management organization applying on behalf of a charter school for a grant under this article.
- (d) "Application" shall mean a completed application (Form CSFA 05-01, rev. 2009), incorporated herein by reference, as defined and developed by the Authority and available on its website, and all other documents required to be submitted to the Authority.
- (e) "CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) to the California Department of Education.
- (f) "Charter School" shall mean a school meeting the definition of a charter school in Education Code section 47600, et seq. and also meeting the federal definition of charter school as defined in section 5210(1) of

the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.

(g) "Chartering Authority" shall mean the governing board of the school district, county board of education, or the State Board of Education, that granted a school's petition to become a charter school pursuant to Education Code section 47605.

(h) "Classroom-Based Instruction" shall have the meaning set forth in Education Code section 47612.5(c)(1).

(i) "Free and Reduced Lunch" means the Free/Reduced Percentage as collected by the California Department of Education (CDE), and posted on the CDE website.

(j) "Grantee" means the California School Finance Authority, which will serve as the administrator of the grant and will make final award and disbursement decisions.

(k) "Low-income" shall refer to the percentage of pupils deemed to be eligible for free/reduced meals as identified in the Free and Reduced Price meals data for the school on file at the California Department of Education.

(l) "New Construction Eligibility" means the result of the calculation determined in Education Code sections 17071.75 and 17071.76.

(m) "Nonprofit Entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the Internal Revenue Code section 501(c)(3), or is organized and operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, section 5110, et seq.

(n) "Program" means the 2009 State Charter School Facilities Incentive Grants Program (CFDA #84.282D).

(o) "Subgrantee" means an Applicant awarded grant funds on behalf of a charter school.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Sections 17078.52, 17180, 47605 and 47612.5, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of subsection (h), transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsections (a), (b), (g) and (i), new subsection (j) and subsection relettering filed 4-19-2007; operative 4-19-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
5. Amendment of subsections (b) and (e) filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
6. Amendment filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10177. Eligible Applicant.

Any Applicant shall be eligible to apply for a grant if all of the following conditions are met:

- (a) An approved charter has been awarded and is in place and current at the time of application, and without interruption throughout the application review and approval process.
- (b) The charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission and without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the school's good standing and compliance with the terms of its charter. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority's governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.
- (c) The charter school has completed at least one school year of instructional operations under its current County-District-School (CDS) Code and charter number issued by the California Department of Education.

(d) The charter school is not a current subgrantee pursuant to the 2004 State Charter School Facilities Incentive Grants Program (Rounds 1–5) and has not received an award pursuant to the 2009 Program (Rounds 6–10).

(e) At least eighty percent (80%) of the instructional time offered by the charter school shall be at the school site, and the charter school shall attain an average daily attendance rate of at least eighty percent (80%) based on the school's most recent CBEDS report.

(f) The charter school is established pursuant to Education Code section 47600, et seq., and also meets the federal definition of charter school as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.

(g) The charter school admits students by lottery in the event more students want to attend the school than the school can accommodate.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Sections 17078.52 and 17180, Education Code.

HISTORY

1. New section filed 6–27–2005 as an emergency; operative 6–27–2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–25–2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–17–2005 as an emergency; operative 10–17–2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–14–2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10–17–2005 order, including amendment of subsection (b), transmitted to OAL 2–8–2006 and filed 3–24–2006 (Register 2006, No. 12).
4. Amendment of subsections (b)–(c) filed 4–19–2007; operative 4–19–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
5. Amendment of subsections (a)–(c), repealer of subsection (d) and subsection relettering filed 3–24–2008; operative 4–23–2008 (Register 2008, No. 13).
6. Amendment of subsection (d) filed 3–23–2009; operative 4–22–2009 (Register 2009, No. 13).
7. Amendment of subsections (b) and (d) filed 3–25–2010; operative 4–24–2010 (Register 2010, No. 13).

§ 10178. Eligible Costs.

(a) Grant funds may be applied toward a charter school's costs of:

- (1) rent and lease payments for existing or new facilities; or
- (2) mortgage and debt service payments for existing or new facilities; or
- (3) purchase, acquisition, design, construction, or renovation of a facility.

(b) Grant funds must be used to pay current and future facilities costs, for up to a three-year period. Awards may not be used to reimburse a charter school for costs incurred prior to the date the grant is awarded. Awards may not be used toward the same debt or project (purchase/construction/renovation) related to a project designated in a prior grant award. In addition to documented evidence of an existing lease, rent, mortgage or debt obligation, the Authority reserves the right to evaluate prior year's facilities costs to determine eligibility for the current funding round.

(c) Grant funds may not be applied toward a school district's costs of providing a charter school with a facility.

(d) Grant funds may not be used to: 1) supplement a New Construction project funded through the Charter School Facilities Program; 2) make Charter School Facilities Program payments to the State; or 3) satisfy a Charter School Facilities Program recipient's local matching share.

(e) Grant funds must be expended and liquidated within the guidelines of this article and the State Charter School Facilities Incentive Grants Program.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6–27–2005 as an emergency; operative 6–27–2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–25–2005 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 10–17–2005 as an emergency; operative 10–17–2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–14–2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10–17–2005 order, including amendment of subsection (c), transmitted to OAL 2–8–2006 and filed 3–24–2006 (Register 2006, No. 12).
4. Amendment of subsection (d) filed 4–19–2007; operative 4–19–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
5. Amendment of subsection (a), new subsection (d) and subsection relettering filed 3–24–2008; operative 4–23–2008 (Register 2008, No. 13).
6. Amendment of subsection (a), new subsections (a)(1)–(3) and amendment of subsection (b) filed 3–25–2010; operative 4–24–2010 (Register 2010, No. 13).

§ 10179. Maximum Grant.

(a) Grant awards that are used toward the annual cost of rent, lease, mortgage, or debt service payments for existing or new facilities shall be based on the following:

(1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of seven hundred and fifty dollars (\$750) per student based on the enrollment on file with the California Department of Education, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.

(2) No individual grant may exceed two hundred and fifty thousand dollars (\$250,000) per year, with a maximum grant period of up to three years. The grant period shall not exceed the end of the funding period as determined by the U.S. Department of Education and referenced in Section 10185.

(b) Grant awards that are used toward the purchase, design, construction, and renovation costs of land and facilities, shall be based on the following:

(1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of one thousand dollars (\$1,000) per student based on the enrollment on file with the California Department of Education, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.

(2) No individual grant may exceed five hundred thousand dollars (\$500,000) per year, with a maximum grant period of up to three years. The grant period shall not exceed the end of the funding period as determined by the U.S. Department of Education and referenced in Section 10185.

(c) Grant awards, for up to a three-year period, will be reserved and apportioned from funds available in the year that the subgrantee is awarded funding.

(d) Grant funds from the first five funding rounds that become available may be awarded to an alternate applicant from the fifth funding round only, and may not be combined with any funds available for subsequent funding rounds. Grant funds from Funding Rounds 6–10 that become available may be awarded to an alternate applicant from the most recent funding round until the next funding round commences, at which time any funds that become available will combined with the available funds for the new funding round.

(e) An organization comprised of more than one charter school may apply for more than one grant by submitting a separate application for each charter school.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6–27–2005 as an emergency; operative 6–27–2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–25–2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–17–2005 as an emergency; operative 10–17–2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–14–2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10–17–2005 order, including amendment of subsections (a)(1) and (b)(1), transmitted to OAL 2–8–2006 and filed 3–24–2006 (Register 2006, No. 12).
4. New subsection (d) and subsection relettering filed 4–19–2007; operative 4–19–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).

5. Amendment of subsections (a)(2), (b)(2) and (d) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10180. Application Submission.

(a) Application for grant funds shall be made on a form prescribed by the Authority, and will be available as described below. The Authority will accept applications during the application periods described. One original and one duplicate application package must be received by the Authority, during regular business hours, by the final filing date. Applications received after the final filing date for each funding round will not be accepted for review and will be returned to the applicant. Applications shall be considered complete and final as of the date submitted. No further information will be accepted after the final filing date for purposes of evaluating the application, unless otherwise determined by the Executive Director of the Authority. Review and evaluation of applications by staff shall be based solely upon the information contained in and submitted with the application at the time of filing, and supporting information obtained directly from other state and local agencies. For organizations with more than one charter school, a separate application is required for each charter school applying for a grant.

(b) Applications for the first funding round will be available by July 1, 2005. The final date to submit applications will be August 1, 2005. Specific availability and deadline dates will be posted on the Authority's Web site no later than June 30, 2005.

(c) Applications for all subsequent funding rounds will be available after January 15 of each year. The final date to submit applications will be March 1 of each year (or the first business day thereafter if March 1 falls on a Saturday or Sunday). Specific application availability and deadline dates for each funding round will be posted on the Authority's Web site by December 15 of each year.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of section, transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsections (a) and (c) filed 4-19-2007; operative 4-19-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
5. Amendment of subsection (a) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10181. Content of Application.

Completed applications and all attachments shall be submitted in duplicate to the Authority and shall include, but not be limited to, all of the following items.

- (a) Application (CSFA Form 05-01).
- (b) Description of how an award of grant funds for facilities will be used.
- (c) Copy of current charter agreement, and verification of the expiration date.
- (d) Evidence that the school is organized under section 501(c)(3) of the Internal Revenue Code, or is a nonprofit public benefit corporation pursuant to California Corporations Code section 5110, et seq., if applicable.
- (e) Copy of lease contract, rental agreement or other documentation verifying required payments and evidence that the term matches or exceeds the anticipated grant term.
- (f) A completed Legal Status Questionnaire submitted in the form set forth in CSFA 05-01.
- (g) For construction/renovation or purchase projects only, a detailed description of the project, including timelines, anticipated costs, bids, and other funding sources.

(h) For construction/renovation or purchase projects only, proof of site control. Such proof may consist of (1) a current title report issued no more than 90 days prior to application showing ownership of the site; or (2) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the Applicant and the owner of the subject property, including evidence that all extensions are in place to keep the agreement current through the grant award date.

(i) For construction/renovation or purchase projects only, evidence of the applicable discretionary use permits and approvals from federal, state or local planning agencies for the proposed project.

(j) Agreement and Certification. The applicant shall agree and certify under penalty of perjury to the following terms and conditions as a requirement of receiving any grant funds. The agreement and certification shall be executed by the charter school's executive director, principal, chair of the board, or another authorized individual and shall be included in the application.

(1) Applicant may be required to return all or a portion of the grant funds including any investment earnings if the applicant fails to use the funds as approved. In cases where the grant will fund architect, design, or engineering fees or land acquisition costs as part of a construction project, the applicant may be required to return all grant funds and any investment earnings if the Authority cannot determine the associated larger construction project has been completed, based on timelines provided within the application. Grant funds shall only be used by the subgrantee in the manner described in the application, unless the Authority approves a change in writing pursuant to section 10186.

(2) The applicant's project and financial records are subject to audit and inspection by the Authority and the Bureau of State Audits.

(3) Applicant has either disclosed all legal information as required in the Legal Status Questionnaire, or has no legal information to disclose.

(4) Applicant will notify the Authority in writing at the time of project completion with evidence of completion included.

(5) Applicant will provide all documents and information required by law and meets all necessary requirements prior to the release of any funds.

(6) Applicant is required to immediately notify the Authority of any material change to the charter school's enrollment, student performance, charter status, or financial condition.

(7) For all construction/renovation or purchase projects, a copy of the executed construction contracts and all required permits must be submitted no later than one year from the award date and prior to any disbursements.

(k) Verification the charter school is in good standing with its chartering authority and in compliance with the terms of its charter at the time of application submission and without interruption throughout the term of the grant, must be provided directly from the chartering authority on a form provided by the Authority. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including repealer of subsections (d)-(f) and (h) and subsection relettering, transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of first paragraph and subsections (c) and (g) filed 4-19-2007; operative 4-19-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).

5. Amendment of subsections (b), (d), (f)–(h) and (i)(6)–(7) filed 3–24–2008; operative 4–23–2008 (Register 2008, No. 13).
6. New subsection (b), subsection relettering and new subsection (k) filed 3–25–2010; operative 4–24–2010 (Register 2010, No. 13).

§ 10182. Evaluation Criteria.

Preference points will be calculated for all eligible applications. An application shall receive preference points based on the total of (a), (b), (c), (d), (e), and (f), up to a maximum of 160 points, as follows:

(a) Low Income: Up to 60 points based on the percentage of pupils at the charter school meeting the definition of low-income. Preference points assigned shall be based on data collected and posted by the California Department of Education on its web site. The following sliding scale will be used to determine the number of preference points:

<i>Percentage Receiving Free/Reduced Lunch</i>	<i>Preference Points Assigned</i>
NA or unestablished	0
1–15%	2
16–25%	4
26–30%	8
31–35%	10
36–40%	14
41–45%	18
46–50%	22
51–55%	26
56–60%	28
61–65%	30
66–70%	34
71–75%	38
76–80%	42
81–85%	46
86–87%	50
88–89%	54
90%	55
91%	55.5
92%	56
93%	56.5
94%	57
95%	57.5
96%	58
97%	58.5
98%	59
99%	59.5
100%	60

(b) Overcrowded School District: Up to 20 points if the charter school qualifies as overcrowded through either of the following two options. The charter school may only receive overcrowding points pursuant to subsection (b)(1) or subsection (b)(2). The charter school may not receive points from both subsection (b)(1) and subsection (b)(2), or any combination thereof. If the charter school is eligible for overcrowding points under both subsections, preference points shall be awarded based on the greater of subsection (b)(1) or subsection (b)(2).

(1) Overcrowded School Site: If the applicant charter school is physically located within three miles driving distance of any public school for which the public school is eligible for funding under the Overcrowding Relief Grant based on the current list qualified by the most recent CBEDS, or meets the criteria for the Critically Overcrowded School program with the most current CBEDS, as identified for either program by the California Department of Education, the applicant will receive 10 preference points.

(2) Overcrowded School District. The school district where the charter school is physically located is determined to be overcrowded. The Percentage Overcrowded is determined by dividing the district's remaining New Construction Eligibility by its current enrollment (round up) and multiplying the product by 100. Charter schools located in districts that do not have current new construction eligibility established by the Office of Public School Construction, Department of General Services, will not be assigned any points in this category. The following sliding scale will be used to determine the number of preference points:

<i>Percentage Overcrowded</i>	<i>Preference Points Assigned</i>
Unestablished	0
1–2%	2
3–5%	4
6–10%	6
11–15%	8
16–20%	10
21–25%	11
26–30%	12
31–35%	13
36–40%	14
41–45%	15
46%	16
47%	17
48%	18
49%	19
50% and above	20

(c) Nonprofit Entity: If the charter school or entity operating the charter school meets the definition of a nonprofit entity as defined in this article, the application will receive 20 preference points.

(d) Student Performance: If the charter school meets its Academic Performance Index (API) Growth Target for either Schoolwide or Subgroups for the most recent year, the applicant will receive 20 preference points. Staff will rely on data posted on CDE's website when assigning points in this category.

(e) School Choice: If the charter school is providing a school choice option in a community of greatest need, it may receive up to 20 points through the following two opportunities. The charter school may receive 10 points pursuant to subsection (e)(1) and 10 performance points pursuant to subsection (e)(2). The charter school may receive 10 points from each subsection (e)(1) and subsection (e)(2), or from either of the subsections, for a maximum of 20 preference points.

(1) Adequate Yearly Progress: If the applicant charter school is physically located within three miles driving distance of any traditional public school (serving the same grade levels as the applicant charter school) for which CDE has calculated AYP criteria and indicates the traditional school did not meet all AYP criteria for the most recent year, and the applicant charter school did meet all AYP criteria for the most recent year, the applicant charter school will receive 10 preference points. Verification of AYP data shall be based on data posted by the California Department of Education on its website.

(2) Academic Performance Index Growth Target: If the applicant charter school is physically located within three miles driving distance of any traditional public school (serving the same grade level as the applicant charter school) for which the API Growth Target has been calculated, however, the traditional school did not meet its API Growth Target for Both Schoolwide and Subgroups for the most recent year, and the applicant charter school did meet its API Growth Target for Both Schoolwide and Subgroups for the most recent year, the applicant charter school will receive 10 preference points. Verification of API Growth Target data shall be based on data posted by the California Department of Education on its website.

(f) First-Time Award Competitive Priority: If an applicant charter school has not received an award under the 2004 State Charter School Facilities Incentive Grants Program (Rounds 1–5), the applicant charter school shall receive an additional 20 preference points.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Sections 17078.56 and 17180, Education Code.

HISTORY

1. New section filed 6–27–2005 as an emergency; operative 6–27–2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–25–2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–17–2005 as an emergency; operative 10–17–2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–14–2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10–17–2005 order, including amendment of subsections (b) and (c), transmitted to OAL 2–8–2006 and filed 3–24–2006 (Register 2006, No. 12).
4. Amendment filed 4–19–2007; operative 4–19–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).

5. Amendment of first paragraph and subsection (d) filed 3-24-2008; operative 4-23-2008 (Register 2008, No. 13).
6. Amendment of subsection (b) and new subsections (b)(1) and (b)(2) filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
7. Amendment of first paragraph and subsections (b)-(b)(1) and (d) and new subsections (c)-(f) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10183. Award Methodology.

(a) In each funding round, staff shall rank the applications based on the scores received, with the highest score ranking first. In the event that more than one application has the same overall score, the application with the highest percentage in the low-income category will receive a higher ranking. If more than one application has the same overall score as well as the same low-income percentage, the application with the highest points in the overcrowded school district category will receive a higher ranking. If application of the tiebreaker described above results in more than one application still having the same ranking, applications with the earliest mailing time will be given preference. Applications that are hand-delivered and do not have a mailing time will be given preference in this situation based on the time received by the Authority.

(b) If the application is not complete at the time of submission, the applicant will be notified and given a 24-hour period to provide the additional information. Failure to comply with the prescribed time period will result in a new date being assigned to the application for ranking purposes described above as of the date the additional information is received.

(c) For each funding round, the Authority shall make an initial award for each application, taking into account the ranking of all applications, the total amount of funds requested and the total amount of funds available. In the event total funds requested exceed total funds available, the Authority shall allocate funds beginning with the application scoring the highest ranking, and then proceed with the next highest rank until all funds have been awarded.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of subsection (a), transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsection (a) filed 4-19-2007; operative 4-19-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).

§ 10184. Approval of Grant and Notification of Subgrantee.

Allocations approved by the Authority at a regularly scheduled board meeting shall be awarded as grants to subgrantees. Subgrantees will be notified in writing within seven (7) business days of the board meeting of the amount of the grant and the disbursement schedule.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of section, transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).

§ 10185. Obligation and Expenditure of Grant Funds.

Grant funds shall be used for the immediate needs of the designated project. Grant funds must be obligated and expended by the dates speci-

fied in the grant agreement. The funding period will be no more than three years, which means that all funds must be obligated no more than three years from when a grant is awarded and all funds must be liquidated no more than three years and 90 days from when the grant was awarded by the Authority.

The end of the funding period for the first five funding rounds is designated as September 30, 2012 by the U.S. Department of Education. The end of the funding period for the subsequent funding rounds (six through ten) shall be determined by the U.S. Department of Education and is currently targeted as September 30, 2017. No extension of the funding period will be considered or allowed unless approved in writing by the U.S. Department of Education. Grants to subgrantees that are made within three years of the end of the funding period will be awarded based on the amount of time remaining in the funding period.

Subgrantees that receive an award for purchases, construction, or renovation shall provide verification that the approved project has been initiated within six months of the award date and shall annually provide sufficient documentation to approve disbursement equal to each year's award. Subgrantee also shall provide semi-annual progress reports to the Authority.

If Authority staff determines at its discretion that the Subgrantee does not demonstrate timeliness, readiness, or feasibility in providing verification of continued eligibility for each disbursement, the Subgrantee will not be eligible for disbursement of Grant funds.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
5. Amendment of second paragraph and new third paragraph filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10186. Approval of Grant Use Change.

The Authority may, on a case-by-case basis, consider a change in the use of the grant funds if the subgrantee demonstrates, to the Authority's satisfaction, that the change is consistent with the Program, the State Charter School Facilities Incentive Grants Program, and this Article.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of section, transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).

§ 10187. Grant Agreements.

The terms and conditions of a grant shall be set forth in a grant agreement, which shall include, but not be limited to, all of the following terms and conditions:

(a) The dates by which the grant funds must be legally obligated, expended and liquidated.

(b) A provision that any unspent grant funds and any unspent investment earnings on such grant funds shall revert to the Authority.

(c) Agreement to comply with this Article and federal requirements pertaining to the State Charter School Facilities Incentive Grants Program.

(d) Agreement that the subgrantee will defend, indemnify and hold harmless the Authority and the state, and all officers, trustees, agents, and employees of the same, from and against any and all claims, losses, costs, damages, or liability of any kind or nature, whether direct or indirect, arising from or relating to the grant and the project or the Program.

(e) Agreement that the grant shall only be used for projects as described in the subgrantee's application and approved by the Authority.

(f) Any audit provisions as required by the Authority and/or the U.S. Department of Education.

(g) The charter school shall continuously maintain its good standing with the chartering authority and its compliance with the terms of the charter. The Authority reserves the right to contact the chartering authority directly seeking written verification that the school is in good standing and in compliance with the terms of its charter.

(h) Applicants are required to notify the Authority, within 30 days, of any material changes to the charter school's facilities, enrollment, charter status, nonprofit status, financial condition, or scope of the project that occurs between the time of application and the time of completing the project and submitting the final performance report.

(i) Current CBEDS are to be reported to the Authority within 30 days of each Information Day, until the time at which project completion and the final performance report is submitted.

(j) In the event that the charter school is not in compliance with its charter authorizer or the charter is not in good standing, not renewed, or revoked at any time during the grant period, the subgrantee will advise the Authority within 30 days of notification of such action, including providing the Authority with a copy of the document provided by the chartering entity notifying the charter school of such action.

(k) All subgrantees are required to submit two copies of a final performance report within 60 days after the expiration or termination of grant support.

(l) The format of all performance reports will be provided by the Authority and will include information requested by the U.S. Department of Education.

(m) Any other provisions required by the Authority and/or the U.S. Department of Education.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including new subsection (g) and subsection relettering, transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsection (g) filed 3-24-2008; operative 4-23-2008 (Register 2008, No. 13).
5. Amendment of subsection (k) filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
6. Amendment of subsections (d), (h), (j) and (k) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10188. Release of Funds.

(a) No grant funds shall be released until the grant agreement and supporting attachments have been provided and it has been determined by the Executive Director that the charter school continuously meets the requirements of the grant program.

(b) Applicants will be afforded two options for disbursement of grant funds, depending on the use of the grant award. Under the first option, charter schools shall apply monthly disbursements of grant funds toward the monthly costs of rent, lease, mortgage or debt service payments over a three-year period, if such costs are sufficiently documented to the Executive Director's satisfaction. Under the second disbursement option, charter schools have the choice of applying grant funds (equal to a three-year award) toward the costs of acquiring a facility or land and

constructing and/or renovating a facility, if such costs are sufficiently documented to the Executive Director's satisfaction. Charter schools requesting the second option will be required to demonstrate a commitment toward the acquisition of a facility at the time of application. Such commitment may include, but not be limited to, verification of the charter school's possession of an option to purchase land and/or detailed project plans and drawings.

(c) Grant fund awards shall be released on the dates listed in the grant agreement.

(d) All disbursements of Grant fund awards shall be processed according to the schedule established by the Authority.

(e) All subgrantees shall submit documentation of continued eligibility on a semi-annual basis during the months of February and August.

(1) Documentation of continued eligibility shall include, but not be limited to, copies of the current charter and current leases(s); verification of any changes to the subgrantee's name, project, location, or facility costs; executed amendments to the grant agreement, when appropriate; and verification and/or status of pending or threatened legal issues or investigations.

(2) Documentation of continued eligibility shall require verification the subgrantee charter school is continuously in good standing with its chartering authority and continuously in compliance with the terms of its charter without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the school's good standing and compliance with the terms of its charter. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority's governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.

(3) Documentation of continued eligibility must be received and approved by the Authority on or before February 28th and August 30th of each year in order for the Authority to release a disbursement.

(4) Failure to meet the February 28th or August 30th deadline shall result in the subgrantee being declared ineligible to receive the first monthly disbursement of the respective semi-annual disbursement period. The forfeited funds cannot be disbursed retroactively and will immediately revert back to the Authority.

(5) If the required documentation is not received and approved by the Authority within 30 calendar days following the February 28th and August 30th deadline, the subgrantee shall be declared ineligible to receive the remaining five monthly disbursements for the respective semi-annual disbursement period. The forfeited funds cannot be distributed retroactively and will immediately revert back to the Authority.

(f) Subgrantees applying grant funds toward the costs of acquiring land and purchasing, constructing, or renovating a facility must also provide all documentation verifying eligible costs annually, as described in Section 10185.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order, including amendment of subsection (b), transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsections (a) and (b) filed 4-19-2007; operative 4-19-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
5. Amendment of subsection (b) filed 3-24-2008; operative 4-23-2008 (Register 2008, No. 13).
6. Amendment of subsection (b) and new subsections (d)-(f) filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
7. Amendment of subsections (b) and (e)-(e)(1), new subsection (e)(2), subsection renumbering and amendment of newly designated subsection (e)(5) and subsection (f) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10189. Completion of Grant Funded Construction Project.

(a) The subgrantee shall certify to the Authority that the project is complete and, to the extent not already provided to the Authority, provide supporting documentation as follows:

(1) Construction and renovation projects require documentation including, but not limited to, copies of the certificate of occupancy, final payment certification by the architect, final payment request from the contractor and corresponding copies of cancelled checks. If the subgrantee does not provide copies of cancelled checks, the subgrantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

(2) Real property acquisition projects require a copy of the final closing statement with certification by the title company, to be received by the Authority within 60 days of the disbursement of grant funds.

(b) If the subgrantee fails to complete the project within the project period, the Authority may require remedies, including forfeiture and return of all grant funds and any accrued interest thereon to the Authority.

(c) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.

(d) The Authority or Authority staff may seek third party verification regarding any and all applicable costs associated with the facility/project receiving a grant pursuant to this Article.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. Amendment of subsections (a)(1)-(2) filed 3-24-2008; operative 4-23-2008 (Register 2008, No. 13).
5. Repealer of subsection (c) and subsection relettering filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).

§ 10190. Audits and Conflicts of Interest.

(a) The Authority and/or the Bureau of State Audits may conduct or require periodic audits to ensure subgrantees are using grant funds consistent with the requirements and the terms of the Program, the State Charter School Facilities Incentive Grant, and this article as approved. Subgrantees shall retain all documentation and financial data necessary to substantiate the purposes for which the grant funds were spent for a period of three years after the certification of completion of the project has been submitted or three years after the end of the funding period, whichever is longer.

(b) Subgrantees must avoid apparent and actual conflicts of interest when administering grants from the U.S. Department of Education. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family members; and (b) the person is a public official or has a family or business relationship with the subgrantee. Section 75.525(b) provides further that a subgrantee may not permit any person participating in a project to use his or her position for a purpose that is — or gives the appearance of being — motivated by a desire for a private or financial gain for that person or for others.

(c) Subgrantees will be required to routinely verify continued eligibility. Documentation of continued eligibility will include, but not be limited to, submission of a completed Legal Status Questionnaire disclosing information relating to any legal or regulatory proceedings or investigations in which the subgrantee or its parent/subsidiary/affiliate is or has been a party and which might have a material impact on the financial or educational viability of the charter school. The responses on the Legal Status Questionnaire and all supporting documents related to the responses will be reviewed by Authority staff and legal counsel prior to authorizing additional disbursements of grant funds.

(d) When using federal funds to enter into a contract, a State or local entity receiving a grant must comply with 34 CFR 80.36. These standards require federal grant subgrantees to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the subgrantee may participate in the selection, award, or administration of any contract supported by federal funds if a real or apparent conflict of interest exists.

(e) When these funds are used for construction-related activities costing over \$2,000, such as constructing a school building, renovating an existing owned school facility, or making leasehold improvements, any laborers and mechanics employed by contractors or subcontractors on the projects assisted with these federal funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act (40 USCA section 3142, et seq.).

(f) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).
4. New subsection (c) and subsection relettering filed 3-23-2009; operative 4-22-2009 (Register 2009, No. 13).
5. Amendment of subsection (a) and new subsection (f) filed 3-25-2010; operative 4-24-2010 (Register 2010, No. 13).

§ 10191. Funding Contingency.

(a) This grant program is contingent upon the receipt of funds in each budget period as scheduled by the U.S. Department of Education.

(b) Continuing apportionments to subgrantees will be contingent upon the subgrantee's eligibility to receive such apportionments.

NOTE: Authority cited: Sections 17179 and 17180, Education Code. Reference: Section 17180, Education Code.

HISTORY

1. New section filed 6-27-2005 as an emergency; operative 6-27-2005 (Register 2005, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2005 as an emergency; operative 10-17-2005 (Register 2005, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-14-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-17-2005 order transmitted to OAL 2-8-2006 and filed 3-24-2006 (Register 2006, No. 12).

* * *

§ 4298. Hog Mills.

(a) To minimize jamming, hog mills shall be provided with feed chutes and conveyors designed to handle the material being processed.

(b) Chutes shall be arranged so that the distance from any place on the rim to the cutter knives is no less than 40 inches.

(c) The feed chutes shall be provided with suitable baffles, screens, or barriers which shall prevent material being thrown from the mill.

(d) The top rim of the chute shall extend no less than 36 inches above the floor or working platform, unless the chute opening is protected by other adequate means.

(e) Employees feeding or tending hog mills shall be provided with and required to use safety belts and lines, unless they are otherwise protected from falling into the mill.

(f) All conveyor-fed hog mills shall be equipped with a trip bar, or emergency stop, located where employees can readily reach it to immediately stop the conveyors. A metal detector shall be installed whenever possible.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. New section filed 11-16-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Amendment of subsection (c) filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).

§ 4299. Brush and Slash Chippers.

(a) Access panels for maintenance and adjustment shall be closed and secured prior to operation of brush chippers.

(b) Each rotary drum or disk-type chipper not equipped with a mechanical infeed system shall be equipped with an infeed hopper not less than 85 inches, measured from the blades or knives to ground level or working level over the centerline of the hopper, and shall have sufficient height on its side members so as to prevent personnel from contacting the blades or knives of the machine during normal operations.

(c) Each rotary drum or disk-type chipper not equipped with a mechanical infeed system shall have a flexible anti-kickback device installed in the infeed hopper for the purpose of protecting the operator and other persons in the machine area from the hazards of flying chips and debris.

(d) Each disk-type chipper equipped with a mechanical infeed system shall have a quick stop and reversing device on the infeed. The activating lever for the quick stop and reversing device shall be located within easy reach of the operator.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Renumbering of Section 4299 to Section 4297, and new section filed 4-27-79; effective thirtieth day thereafter (Register 79, No. 17). For history of former section, see Register 74, No. 43.
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).

§ 4300. Circular Ripsaws Manual Feed (Class B).

(a) Each circular hand-fed rip saw shall be guarded by a hood which shall completely enclose that portion of the saw blade above the table and that portion of the blade above the material being cut.

(b) The hood shall automatically adjust itself to the thickness of and remain in contact with the material being cut at the point where the stock encounters the saw blade, or

(c) The hood may be a fixed or manually adjusted hood or guard provided the space between the bottom of the guard and the material being cut does not exceed 1/4 inch.

(d) The hood or other guard shall be so designed as to prevent a "kickback," or a separate attachment that will prevent a "kickback" shall be provided. "Anti-kickback" devices shall be designed to be effective for all thicknesses of material.

(e) Except when grooving, dadoing or rabbeting, a spreader shall be provided and fastened securely to the saw. It shall be designed and installed in accordance with the Provisions of Section 4296.

(f) Push sticks or push blocks shall be provided at the work place in the several sizes and types suitable for the work to be done.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Repealer and new section filed 10-25-74, effective thirtieth day thereafter (Register 74, No. 43).
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).
3. Editorial correction of subsection (d) printing error (Register 86, No. 51).
4. Amendment of subsections (e) and (f) filed 6-30-2008; operative 7-30-2008 (Register 2008, No. 27).

§ 4300.1. Table Saws — Manual Feed (Class B).

(a) Each hand-fed table saw shall be guarded by a hood which completely encloses that portion of the saw blade above the table and that portion of the blade above the material being cut.

(1) The hood shall automatically adjust itself to the thickness of and remain in contact with the material being cut at the point where the stock encounters the saw blade, or

(2) The hood may be a fixed or manually adjusted hood or guard provided the space between the bottom of the guard and the material being cut does not exceed 1/4 inch.

(b) Except when crosscutting, grooving, dadoing, or rabbeting, a spreader shall be provided and fastened securely to the saw. It shall be designed and installed in accordance with the provisions of Section 4296.

(c) Ripping operations shall comply with the following requirements in addition to those in subsections (a) and (b):

(1) The hood or other guard shall be so designed as to prevent a "kickback," or a separate attachment that will prevent a "kickback" shall be provided. "Anti-kickback" devices shall be designed to be effective for all thicknesses of material.

(2) Push sticks or push blocks shall be provided at the work place in the several sizes and types suitable for the work to be done.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. New section and new Figure A filed 6-30-2008; operative 7-30-2008 (Register 2008, No. 27).

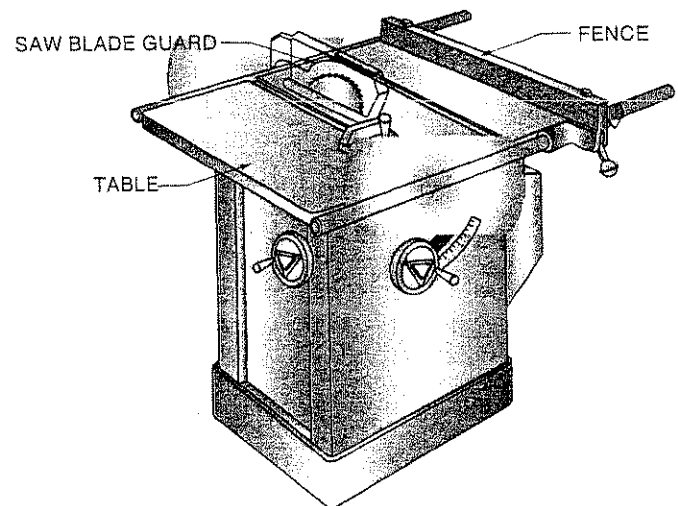


Figure A. Table Saw

§ 4301. Self-Feed Circular Ripsaws.

(a) In addition to guards over blades as specified in Section 4296, feed rolls shall be protected by a hood or guard to prevent the hands of the operator from coming in contact with the in-running rolls at any point.

(b) Hoods or guards on feed rolls shall be constructed of suitable material, as specified in Section 3942, preferably metal. The bottom of the guard shall come down to within 3/8-inch of the plane formed by the bottom or working surfaces of the feed rolls. This distance (3/8-inch) may be increased to 3/4-inch, provided the lead edge of the hood is extended to be not less than 5 1/2-inches in front of the nip point between the front roll and the work.

(c) The employer shall ensure that power feed devices are properly adjusted for each piece of stock in order to reduce the possibility of kickback.

(d) Every self-feed circular rip saw shall be equipped with an anti-kickback device installed on the infeed side. Such an anti-kickback device shall be designed to be effective for all thicknesses of material and shall extend the full width of the rolls.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Repealer and new section filed 10-25-74; effective thirtieth day thereafter (Register 74, No. 43).
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).
3. Amendment of subsection (c) filed 3-24-2010; operative 4-23-2010 (Register 2010, No. 13).

§ 4302. Circular Knives and Crosscut Saws (Class B).

(a) A hood shall be used that will cover the saw blade to at least the depth of the teeth or cover the cutting edge of the circular knife.

(b) The hood shall automatically adjust itself to the thickness of and remain in contact with the material being cut at the point where the stock encounters the saw or knife blade, or

(c) May be a fixed or manually adjusted hood or guard provided the space between the bottom of the guard and the material being cut does not exceed 1/2 inch.

EXCEPTION: Circular crosscut saws with stationary table where the saw blade moves forward when cutting (e.g. cut-off saws and radial arm saws).

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Repealer and new section filed 10-25-74; effective thirtieth day thereafter (Register 74, No. 43).
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).

§ 4303. Cordwood and Similar Saws (Class B).

All unused portions of the saw blade shall be guarded.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. New NOTE filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).

§ 4304. Box Shook Cut-off Saws (California Cut-off Saws).

Box shook cut-off saws shall be guarded either by a hood or splitter-type guard. Either type guard shall cover the top back quarter of the saw blade and shall be kept adjusted close to the saw blade.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Amendment filed 10-5-77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).

§ 4305. Swing Cut-Off Saws and Sliding Cut-Off Saws Mounted Above the Table.

(a) The saw blade shall be encased on both sides in such a way that at least the upper half of the blade and the arbor end will be completely covered.

(b) There shall be an effective device to return the saw automatically to the back of the table when released at any point of its travel; such device shall prevent saw from rebounding and shall not depend on fibre rope, cord, or a spring for its functioning.

(c) If a counterweight is used all bolts supporting the bar and weight shall be provided with nuts and cotter pins. A bolt shall be put through the extreme end of counterweight bar, or where the weight does not enclose the rod, a safety chain shall be attached to the counterweight.

(d) Limit chains or other positive stops shall be provided to prevent the saw blade from swinging beyond the front edge of the table, or the table shall be extended beyond the swing of the saw blade.

(e) Where it is possible to pass behind a swing cut-off saw the rear of the saw shall be completely housed when the saw blade is in its back position. The housing shall enclose the swing frame as well as the saw blade.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Repealer and new section filed 10-25-74; effective thirtieth day thereafter (Register 74, No. 43).
2. Amendment of subsection (a) and repealer of subsection (f) filed 4-27-79; effective thirtieth day thereafter (Register 79, No. 17).
3. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).
4. Editorial correction of subsection (c) printing error (Register 86, No. 51).

§ 4306. Underhung Swing Cut-Off Saws, Inverted Swing Cut-Off Saws, Jump Saws, Underslung Saws.

(a) All saws shall be effectively guarded above and below the table or roll case. The saw blade shall be fully enclosed when in the extreme back position, and the swing frame shall not pass the vertical position when at its extreme forward limit. A positive stop shall be furnished so that the saw cannot pass the front edge of the table.

(b) A hood-type guard shall cover the blade and extend at least 2 inches in front of the saw teeth when the blade is in the back position and the guard shall be securely fastened to the table.

(c) A traveling guard shall be provided that moves with the blade over the material and covers the exposed part of the blade above the material.

(d) The width of the hood of jump saws shall be limited so as to provide not more than 1/4-inch clearance on each side of the blade.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. Repealer and new section filed 10-25-74; effective thirtieth day thereafter (Register 74, No. 43).
2. Amendment filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41).
3. Change without regulatory effect inserting "(a)" immediately preceding the first paragraph filed pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 7).

§ 4307. Portable Power Driven Circular Hand Saws.

(a) The teeth on the upper half of the blade shall be permanently shielded from contact.

(b) The lower half (point of operation) of the saw blade shall be guarded to the root of the teeth with a telescopic or hinged guard that, for normal operation, opens up as the saw is fed into the cut and automatically returns to the position covering the saw teeth when removed from the cut.

EXCEPTION: The guard described in subsection (b) is not required on hand-held portable powered cut-off saws used by fire/rescue personnel for rescue procedures and/or roof ventilation for smoke removal provided the operator is wearing appropriate eye, face, head and body protection as specified in Articles 10 and 10.1 of the General Industry Safety Orders. This exception also applies to qualified persons (e.g. instructors) wearing personal protective equipment as described herein to instruct personnel in safe roof ventilation/rescue techniques.

(1) Telescopic guards shall be equipped with a lifting lug or lever, remote from the blade teeth, that will permit the operator to safely shift the guard for starting unusual cuts.

(2) Saws with hinged guards shall be equipped with 2 handles so arranged that neither hand is exposed to the hazard of the rotating blade. One handle shall be on the hinged guard, and of such design that its use will avoid exposure of the hand or fingers between the retracted guard and the blade.

(c) Guards shall not be prevented from operating automatically by pins, wedges, or other devices that hold them back in an inoperative position.

(d) Saws with hazardous defects, such as damaged guards or switches, shall be removed from service until repairs are complete.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. New section filed 8-15-86; effective thirtieth day thereafter (Register 86, No. 41). For history of former section, see Register 75, No. 13.
2. New subsection (b) EXCEPTION filed 10-7-94; operative 11-7-94 (Register 94, No. 40).

§ 4307.1. Miter Saws.

(a)(1) With the carriage in the full cut position as depicted in Figures A and B, a guard shall enclose the upper half of the blade and at least 50 percent of the arbor end.

2026, and the annual average percentage of total bus purchases and/or leases that were zero-emission buses.

(h) Transit agencies exempted from the requirements of paragraphs (b)(5) and (c)(4), section 2023.1, title 13, CCR, shall submit annual reports demonstrating that they are achieving NOx emission benefits required in paragraphs (b)(8)(B) and (c)(7)(B), section 2023.1, title 13, CCR. The first report shall be submitted by January 31, 2005. Subsequent reports shall be submitted annually by January 31 through the year 2016.

(i) A transit agency requesting approval for the purchase of diesel-fueled hybrid-electric buses pursuant to paragraph (c)(9), section 2023.1, title 13, CCR, shall:

(1) submit an application for approval that meets the requirements of paragraphs (c)(9)(A) and (c)(9)(B), section 2023.1, title 13, CCR;

(2) include in the application all of the following: the number, manufacturer, make and model year of diesel-fueled hybrid-electric buses to be purchased; the schedule for the purchase and delivery of the buses; a detailed description of all measures that will be used to offset the excess NOx emissions including identification of the specific buses to which the measures will be applied, and the schedule for implementing those measures; and

(3) submit a final report to the Executive Officer within 30 days of receipt of the last diesel-fueled hybrid-electric bus that documents the schedule of delivery of the diesel-fueled hybrid-electric buses, timing, and completion of all measures to achieve the NOx offset.

(j) A new transit agency shall submit the following information to the Executive Officer:

(1) within 60 days of formation, the name of the new transit agency, its mailing address, name of a contact person and that person's e-mail address and phone number; a description of the service area and proposed routes; and the planned number of urban buses and transit fleet vehicles, including model years of engines;

(2) within 120 days of formation, its NOx fleet average for its active fleet and, separately, its transit fleet vehicles, and its diesel PM emission total for its active fleet and, separately, its diesel PM emission total for its transit fleet vehicles.

(k) *Failure to submit complete reports.*

(1) A transit agency that fails to submit a complete report in accordance with this section is subject to civil penalties of not less than \$100 per day for every day past January 31 of each reporting year through 2016. For transit agencies with more than 150 urban buses civil penalties of not less than \$100 per day for every day past January 31 shall continue for each reporting year through 2027.

(2) A new transit agency that fails to submit its report or required information in accordance with this section is subject to civil penalties of not less than \$100 per day for every day past the required reporting dates in section 2023.4(j).

(3) A report that does not contain all required information will not be considered complete. A report will be considered to be complete as of the date that all required information is submitted.

NOTE: Authority cited: Sections 39600, 39601, 39659 and 39667, Health and Safety Code. Reference: Sections 39667, 39700, 43000, 43000.5, 43013, 43018, 43801 and 43806, Health and Safety Code.

HISTORY

1. Renumbering of former section 1956.4 to section 2023.4, including amendment of section heading, section and NOTE, filed 1-31-2006; operative 1-31-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 5).
2. Change without regulatory effect amending subsection (c)(2)(c) filed 6-16-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).
3. New subsection (b)(4) filed 9-7-2006; operative 10-7-2006 (Register 2006, No. 36).
4. Amendment filed 10-15-2007; operative 11-14-2007 (Register 2007, No. 42).

Article 4.5.

§ 2025. Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles.

(a) *Purpose.*

The purpose of this regulation is to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria pollutants, and greenhouse gases from in-use diesel-fueled vehicles.

(b) *Scope and Applicability.*

(1) Except as provided in subsection (c), this regulation applies to any person, business, federal government agency, school district or school transportation provider that owns or operates, leases, or rents, affected vehicles that operate in California. The regulation also applies to persons that sell affected vehicles in California. Affected vehicles are those that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road or off-road engines, both engines of two engine sweepers, schoolbuses, and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds. Affected vehicles also include shuttle vehicles defined in section 2025(d)(68).

(c) *Exemptions*

This regulation does not apply to:

(1) Vehicles subject to the solid waste collection vehicle rule commencing with title 13, CCR, section 2021;

(2) On-road diesel-fueled heavy-duty vehicles over 14,000 pounds owned or operated by a municipality, that comply with the Best Available Control Technology (BACT) requirements of title 13, section 2022.1(a)(1);

(3) Vehicles subject to the fleet rule for transit agencies commencing with title 13, CCR, section 2023;

(4) Vehicles subject to the rule for mobile cargo handling equipment at ports and intermodal rail yards commencing with title 13, CCR, section 2479;

(5) Military tactical support vehicles, as described in title 13, CCR, section 1905;

(6) Authorized emergency vehicles as described in California Vehicle Code (Veh. Code), section 165;

(7) Off-road vehicles subject to title 13, CCR, sections 2401, 2411, 2421, 2432, and 2449;

(8) Dedicated snow-removal vehicles as defined in section 2025(d)(18);

(9) Two-engine cranes as defined in title 13, CCR, section 2449(c)(56);

(10) Historic vehicles as defined in section 2025(d)(41);

(11) Motor homes for non-commercial private use;

(12) Vehicles subject to the regulation for drayage trucks commencing with title 13, CCR, section 2027 until January 1, 2021; and

(13) Trucks with a GVWR of 19,500 pounds or less with originally equipped pick-up beds used exclusively for personal use, non-commercial, non-governmental use.

(d) *Definitions*

For purposes of this regulation, the following definitions apply:

(1) "2004 Model Year NOx Emissions Equivalent" means emissions from:

(A) An engine certified to the 2003 or prior model year heavy duty diesel engine emission standard that was built to 2004 engine emission standards and was not used in any manufacturer's averaging, banking and trading program.

(B) A pre-2004 model year heavy duty diesel engine that is equipped with a verified diesel emissions control strategy (VDECS) that reduces NOx exhaust emissions by at least 55 percent.

(2) "2007 Model Year NOx Emissions Equivalent" means emissions from:

(A) An engine certified to the 2003 or prior model year heavy-duty diesel engine emissions standard that is equipped with a VDECS that reduces NOx exhaust emissions by at least 70 percent; or

(B) An engine certified to the 2004 through 2006 model year heavy-duty diesel engine emissions standard that is equipped with a VDECS that reduces NOx exhaust emissions by at least 40 percent; or

(C) A 2004 model year NOx emissions equivalent heavy duty diesel engine, as defined in section 2025(d)(1)(A), that is equipped with a VDECS that reduces NOx exhaust emissions by at least 40 percent.

(D) An engine certified to the 2007–2009 model year heavy-duty engine emissions standard.

(3) “2008 Baseline Fleet” means the motor vehicles that were owned by the fleet, registered with California’s department of motor vehicles or registered in the home jurisdiction of one of the International Registration Plan member jurisdictions on July 1, 2008, and were driven at least 1,000 miles in the year 2008 in California.

(4) “2010 Model Year NOx Emissions Equivalent” means emissions from:

(A) An engine certified to the 2004 model year heavy-duty diesel engine emissions standard that is equipped with a VDECS that reduces NOx exhaust emissions by more than 85 percent; or

(B) An engine certified to the 2007 model year heavy-duty diesel engine emissions standard that is equipped with a VDECS that reduces NOx exhaust emissions by more than 70 percent; or

(C) An engine certified to the 2010 model year or newer heavy-duty diesel engine emissions standard; or

(D) A heavy-duty engine certified to 0.2 g/bhp-hr or less NOx emissions level; or

(E) An off-road engine certified to the Tier 4 Final engine emissions standard.

(5) “Agricultural Operations” means:

(A) The activity of growing or harvesting crops for the primary purpose of making a profit or providing a livelihood including any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee or farm product. Raising plants at nurseries that sell exclusively retail are not included, or

(B) The cutting or removing of timber, other solid wood products, including Christmas trees, and biomass from forestlands for commercial purposes. The services also include all the work incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for falling trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following forest removal activities. Forest operations include the cutting or removal of trees, tops, limbs and or brush which is processed into lumber and other wood products, and or for landscaping materials, or biomass for electrical power generation. Forest operations do not include conversion of forestlands to other land uses such as residential or commercial developments.

(6) “Agricultural Vehicle” means one of the following types of vehicles:

(A) A truck, or a truck–tractor and trailer combination, that is required to display a hazardous material placard during delivery and exclusively delivers fertilizer or crop protection chemicals that require placard identification for use in agricultural operations from a distribution center to a farm and back, and is owned by a business holding a valid fertilizer or pest control license.

1. Owners of such vehicles must hold:

a. a valid pest control dealer license issued by the California Department of Pesticide Regulation as required under Food & Agricultural Code, Division 6, Chapter 7, Article 6, Section 12101 or,

b. a valid fertilizing materials license issued by the California Department of Food and Agriculture as required under Food & Agricultural Code, Division 7, Chapter 5, Article 4, Section 14591(a) and,

2. Such vehicles must exclusively carry products defined under one of the following, and be required to display an appropriate placard, as required by the United States Department of Transportation:

a. 49 CFR, CHAPTER 1, PART 173.127 (Division 5.1), or

b. 49 CFR, CHAPTER 1, PART 173.132 (Division 6.1), or

c. 49 CFR, CHAPTER 1, PART 173.115 Class 2, (Division 2.1, 2.2, and 2.3),

d. 49 CFR, CHAPTER 1, PART 173.136 Class 8,

e. 49 CFR, CHAPTER 1, PART 173.140 Class 9.

(B) A vehicle, or truck–tractor and trailer combination, owned by a farming business and used exclusively in agricultural operations, or owned by a beekeeping business used exclusively to transport their own bees. This includes supply trucks, cattle trucks, and other vehicles, but excludes vehicles that do not directly support farming operations such as personal use vehicles, vehicles rented or leased out, or vehicles used in a transportation business.

(C) A truck, or truck–tractor and trailer combination, designed for in-field operations that is exclusively engaged in agricultural operations on the farm. Examples include truck configurations designed to spread manure, dispense hay, and dispense freestall bedding. It also includes water trucks and trucks designed or modified to be used exclusively for the dusting, spraying, fertilizing, or seeding of crops. Except as allowed in (A) above, trucks, or truck–tractor and trailer combinations that transport any products, materials, personnel, or equipment are excluded.

(D) A truck, or truck–tractor and trailer combination, that exclusively transports any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee or farm products such as raw, unprocessed crops, livestock, fish, or fowl from the farm to the first point of processing after harvest. Also included are trucks that are used to harvest crops for silage and trucks that transport unprocessed agricultural materials from forest or farm to a biomass facility.

(7) “Alternative Diesel Fuel” means any fuel used in diesel engines that is not a reformulated diesel fuel as defined in sections 2281 and 2282 of title 13, CCR, and does not require engine or fuel system modifications for the engine to operate, other than minor modifications (e.g., recalibration of the engine fuel control) that may enhance performance. Examples of alternative diesel fuels include, but are not limited to, biodiesel, Fischer–Tropsch fuels, and emulsions of water in diesel fuel. Natural gas is not an alternative diesel fuel. An emission control strategy using a fuel additive will be treated as an alternative diesel fuel based strategy unless:

(A) the additive is supplied to the engine fuel by an on-board dosing mechanism, or

(B) the additive is directly mixed into the base fuel inside the fuel tank of the engine, or

(C) the additive and base fuel are not mixed until engine fueling commences, and no more additive plus base fuel combination is mixed than required for a single fueling of a single engine or vehicle.

(8) “Alternative Fuel” means natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely on diesel fuel. “Alternative fuel” also means any of these fuels used in combination with each other or in combination with other non-diesel fuels.

(9) “Alternative-Fueled Engine” means an engine that is exclusively fueled with a fuel meeting the definition of alternative fuel.

(10) “Authorized Emergency Vehicle” has the same meaning as California Vehicle Code section 165.

(11) “Best Available Control Technology BACT Standard” (BACT) means the exhaust PM and NOx standards that must be met according to the requirements of section 2025(f) and 2025(g).

(12) “California Based Broker” means a person, with operations based in California, who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

(13) “Cattle or Calf Feedlot” means a lot or facility where cattle or calves have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(14) “Commercial Vehicle” means a motor vehicle or combination of motor vehicles as defined in California Veh. Code, section 260.

(15) “Common Ownership or Control” means being owned or managed day to day by the same person, corporation, partnership, or associa-

regulation applicability required by section 2025(w) for three years after the sale.

(v) *Right of Entry*

For the purpose of inspecting vehicles subject to this regulation and their records to determine compliance with this regulation, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where vehicles are located or vehicle records are kept.

(w) *Disclosure of Regulation Applicability*

Any person residing in California selling a vehicle with an engine subject to this regulation must provide the following disclosure in writing to the buyer on the bill of sale, "An on-road heavy-duty diesel or alternative-diesel vehicle operated in California may be subject to the California Air Resources Board Regulation to Reduce Particulate Matter and Criteria Pollutant Emissions from In-Use Heavy-Duty Diesel Vehicles. It therefore could be subject to exhaust retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/dieseltruck>."

(x) *Compliance Requirement*

(1) The vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation.

(2) Any in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation.

(3) Compliance may be accomplished by keeping on site a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet.

(4) Any contract that a lessor and lessee enter into that has an effective date of January 1, 2010 or later shall clearly specify whether or not the leased vehicle is to be excluded from the lessor's fleet for the duration of the lease, or the responsibility will be that of the lessee.

(y) *ARB Certificate of Reported Compliance*

After the required reporting and compliance certification are received by ARB staff, ARB will provide the fleet with a Certificate of Reported Compliance with the In-Use On-road Diesel Vehicle Regulation. ARB staff will also post on the website for this regulation the name and motor carrier number for fleets that have reported compliance.

(z) *Non-Compliance*

Any person who fails to comply with the general requirements of this regulation, who fails to submit any information, report, or statement required by this regulation, or who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, and 43016, of the Health and Safety Code. In assessing penalties, the Executive Officer will consider factors, including but not limited to the willfulness of the violation, the length of time of noncompliance, whether the fleet made an attempt to comply, and the magnitude of noncompliance.

(aa) *Severability*

Any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023 and 43600, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39667, 39674, 39675, 40717.9, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, 43600 and 43701(b), Health and Safety Code.

HISTORY

1. New section and Appendix A filed 12-9-2009; operative 1-8-2010 (Register 2009, No. 50).
2. Editorial correction inserting inadvertently omitted article heading (Register 2010, No. 13).

Appendix A

Table A-1

PM Emissions Factors by Engine Model Year (g/mile)

<i>Engine Certification Standard Model Year</i>	<i>Medium Heavy-Duty Diesel Vehicle (MHD)</i>	<i>Heavy Heavy-Duty Diesel Vehicle (HHHD)</i>
Pre-1991	1.65	3.36
1991-1993	0.84	1.25
1994-2006	0.43	0.81
2007-2009*	0.06	0.11
2010 and newer*	0.06	0.11

*If the engine is not equipped by the manufacturer with a diesel particulate filter, use the emission factor for the 1994-2006 model years

Table A-2

NOx Emissions Factors by Engine Model Year (g/mile)

<i>Engine Certification Standard Model Year</i>	<i>Medium Heavy-Duty Diesel Vehicle (MHD)</i>	<i>Heavy Heavy-Duty Diesel Vehicle (HHHD)</i>
2003 and older	14.2	22.0
2004-2006	6.7	12.0
2007-2009	4.0	7.0
2010 and newer	0.8	1.6

§ 2027. In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks.

(a) *Purpose.* The purpose of this regulation is to reduce emissions and public exposure to diesel particulate matter (diesel PM), oxides of nitrogen (NOx), and other air contaminants by setting emission standards for in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California's ports and intermodal rail facilities.

(b) *Applicability.*

(1) This regulation applies to owners and operators of on-road diesel-fueled, alternative diesel-fueled and dual-fueled heavy-duty drayage trucks operated at California ports and intermodal rail yard facilities. This regulation also applies to "motor carriers," "marine or port terminals," "intermodal rail yards," and "rail yard and port authorities."

(2) This regulation does not apply to:

- (A) dedicated use vehicles;
- (B) vehicles operating under an ARB authorized emergency decree;
- (C) authorized emergency vehicles;
- (D) military tactical support vehicles;
- (E) vehicles that operate at port or intermodal rail yard properties in which the ARB Executive Officer has granted an annual exemption under the provisions of subsection (f) to local port or rail yard authorities; and
- (F) yard trucks.

(c) *Definitions.* For purposes of this section, the definitions of Health and Safety Code section 39010 through 39060 apply except to the extent that such definitions may be modified by the following definitions that apply specifically to this regulation.

(1) "Alternative Diesel Fuel" means any fuel used in diesel engines that is not a reformulated diesel fuel as defined in sections 2281 and 2282 of title 13, of the California Code of Regulations, and does not require engine or fuel system modifications for the engine to operate, other than minor modifications (e.g., recalibration of the engine fuel control) that may enhance performance. Examples of alternative diesel fuels include, but are not limited to, biodiesel, Fischer-Trosch fuels, and emulsions of water in diesel fuel. Natural gas is not an alternative diesel fuel. An emission control strategy using a fuel additive will be treated as an alternative diesel fuel based strategy unless:

- (A) the additive is supplied to the engine fuel by an on-board dosing mechanism, or
 - (b) the additive is directly mixed into the base fuel inside the fuel tank of the engine, or
 - (C) the additive and base fuel are not mixed until engine fueling commences, and no more additive plus base fuel combination is mixed than required for a single fueling of a single engine or vehicle.
- (2) "ARB" means the California Air Resources Board.

(3) "ARB Designees" are defined as those entities that ARB designates or contracts with to perform certain functions or provide specific services on its behalf under this regulation.

(4) "Authorized Emergency Vehicle" is as defined in Vehicle Code section 165.

(5) "Average Daily Drayage Truck Visits" is determined by dividing the total number of truck visits within a calendar month by the total number of intermodal rail yard open days for that same calendar month as represented by the following equation:

$$\left(\frac{\text{Total number of truck visits}}{\text{Total number of intermodal rail yard open days}} = \text{Average daily truck count} \right)$$

Where:

(A) a 'truck visit' is defined as each occurrence of a drayage truck transgressing from outside intermodal rail yard property onto intermodal rail yard property; and,

(B) an 'open day' is defined as a calendar day in which an intermodal rail yard has drayage truck traffic.

(6) "Beneficial Cargo Owner" is a cargo owner, the person for whose account the ocean or rail transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean or rail transportation intermediary that accepts responsibility for payment of all applicable charges.

(7) "Bill of Lading" is a document that states the terms of the contract between a shipper and a transportation company. It serves as a document of title of the goods shipped, a contract of carriage, and a receipt for goods.

(8) "CARB Diesel Fuel" is diesel fuel certified by ARB as meeting the fuel specification standards set forth at title 13, California Code of Regulations (CCR) section 2280 et seq.

(9) "Class I Railroad" is a freight railway based on large revenues (\$250 million or more) in comparison to the revenues of Class II (which ranges from greater than \$20 million but less than \$250 million) and Class III (less than \$20 million) railways, as defined by the Surface Transportation Board (STB).

(10) "Compression Ignition Engine" means an internal combustion engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. The regulation of power by controlling fuel supply in lieu of a throttle is indicative of a compression ignition engine.

(11) "Dedicated Use Vehicles" are uni-body vehicles that do not have separate tractor and trailers and include but are not limited to:

- (A) Dedicated auto transports;
- (B) Dedicated fuel delivery vehicles;
- (C) Concrete mixers;
- (D) On-road mobile cranes

(12) "Diesel Fuel" means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons (HC) — organic compounds consisting exclusively of the elements carbon and hydrogen — that is sold or represented by the supplier as suitable for use in an internal combustion, compression — ignition (CI) engine.

(13) "Diesel-Fueled" means a CI engine fueled by diesel fuel, CARB diesel fuel, or alternative diesel fuel, in whole or part.

(14) "Diesel particulate matter (diesel PM)" means the particles found in the exhaust of diesel-fueled compression ignition engines. Diesel PM may agglomerate and adsorb other species to form structures of complex physical and chemical properties. ARB has identified diesel PM as a toxic air contaminant.

(15) "Drayage Truck" means any in-use on-road vehicle with a gross vehicle weight rating (GVWR) greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

(16) "Drayage Truck Owner" means:

(A) the person registered as the owner of a drayage truck as shown by the Department of Motor Vehicles, or its equivalent in another state, province, or country; or the International Registration Plan,

or

(B) the lessee of the truck, as indicated on the drayage truck's registration pursuant to Vehicle Code section 4453.5.

(17) "Drayage Truck Operator" means the driver of the vehicle or any person, party or entity that controls operation of a drayage truck at a port or intermodal rail yard facility.

(18) "Drayage Truck Registry (DTR)" is an ARB database that contains information on all trucks that conduct business at California ports and intermodal rail yards.

(19) "Drayage Truck Registry Number" is a unique identifier issued to the owner of a drayage truck upon registering in the DTR and corresponds to the truck registered.

(20) "DTR Compliant" means that a drayage truck is currently compliant with the requirements of the regulation, including the requirements for the DTR and emission standards.

(21) "Dual-Fuel Engine" means any compression ignition engine that is engineered and designed to operate on a combination of alternative fuels, such as compressed natural gas (CNG) or liquefied petroleum gas (LPG) and diesel fuel or an alternative diesel fuel. These engines have two separate fuel systems, which inject both fuels simultaneously into the engine combustion chamber. A dual-fuel engine is not an alternative-fuel engine.

(22) "Emergency Event" means any situation arising from sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other acts of God, or other unforeseen events beyond the control of drayage truck owners and operators that threatens public health and safety or the reasonable flow of goods movement.

(23) "Emergency Decree" means a determination by the Executive Officer that an emergency event has occurred that requires the immediate temporary operation of drayage trucks at ports and intermodal rail yard facilities.

(24) "Executive Officer" is the Executive Officer of ARB or his/her authorized representative.

(25) "Gross Vehicle Weight Rating (GVWR)" is as defined in Vehicle Code Section 350.

(26) "Heavy-Duty" is a manufacturer's gross vehicle weight rating of greater than 33,000 pounds.

(27) "Intermodal Rail Yard" is any rail facility owned or operated by a Class I railroad where cargo is transferred from drayage truck to train or vice-versa that:

(A) is within 80 miles of a port;

or,

(B) is located more than 80 miles from the nearest port and having, on or after January 2008, 100 or more average daily drayage truck visits in any one calendar month.

Once a rail yard, identified in (B) above, has 100 or more average daily drayage truck visits in any one month, the rail yard will be considered an intermodal rail yard and will be subject to all provisions of this regulation regardless of the size of future average daily drayage truck visits. Intermodal rail yards include, but are not limited to, the following facilities: Union Pacific (UP) Oakland, Burlington Northern Santa Fe (BNSF) Hobart, LATC Union Pacific, Commerce UP, Richmond BNSF, Commerce Eastern BNSF, ICTF UP, San Bernardino, Stockton Intermodal BNSF, Lathrop Intermodal UP, and BNSF Oakland.

(28) "International Registration Plan" is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

(29) "Lessee" has the same meaning as in Vehicle Code section 371.

(30) "Liquid Natural Gas (LNG) Fueled Trucks" are drayage trucks that utilize a heavy-duty pilot ignition engine that is designed to operate using an alternative fuel, except that diesel fuel is used for pilot ignition at an average ratio of no more than one part diesel fuel to ten parts total

fuel on any energy equivalent basis. An engine that can operate or idle solely on diesel fuel at any time does not meet this definition.

(31) "Marine or Port Terminals" means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. For the purposes of this regulation, the term includes but is not limited to production or manufacturing areas, warehouses, storage facilities, and private or public businesses or entities located on or surrounded by port property.

(32) "Military Tactical Support Vehicles" is as defined in title 13, CCR, section 1905.

(33) "Motor Carrier" is a business intermediary that contracts with beneficial cargo owners, ship companies, port terminals or Class I railroads for pick-up and delivery of goods and with drayage truck owners, who it dispatches to ports and/or intermodal rail yards to pick up and deliver such goods.

(34) "On-road" means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the California Department of Motor Vehicles (DMV) under Vehicle Code sections 4000 et seq. — or DMV's equivalent in another state, province, or country; or the International Registration Plan. A vehicle covered under ARB's In-Use Off-Road Regulation, title 13, CCR, section 2449 is not an on-road vehicle.

(35) "Oxides of nitrogen (NOx)" means compounds of nitric oxide, nitrogen dioxide, and other oxides of nitrogen. Nitrogen oxides are typically created during combustion processes and are major contributors to smog formation and acid deposition.

(36) "Port" is the port property where marine and port terminals are typically located for the loading and unloading of water-borne commerce onto and from ocean-going vessels. For purposes of this regulation, port does not include port property that is not related to or primarily used to engage in water-borne commerce. Ports covered by this regulation include, but are not limited to, the Port of Long Beach, Port of Los Angeles, Port of Humboldt Bay, Port of San Diego, Port of Hueneme, Port of Oakland, Port of San Francisco, Port of Sacramento, Port of Stockton, Port of Redwood City, Port of Crockett, Port of Richmond, Port of Pittsburg, and the Port of Benicia.

(37) "Port Authority" means those entities, either public or private, that are responsible for the operation of the ports.

(38) "Port Property" means publicly or privately owned property where a port is located. It is the property that includes the physical boundaries, either contiguous or non-contiguous, of the port and may include other properties owned by the port. For the purposes of this regulation, port property includes privately owned property located within a publicly or privately owned port property's boundaries.

(39) "Rail Yard Authority" means those entities, either public or private, that are responsible for the operation of Class I rail yards.

(40) "Rail Yard Property" means the property constituting the physical boundaries of intermodal rail yards. For the purposes of this regulation, rail yard property also includes privately owned property located within intermodal rail yard boundaries.

(41) "Uni-Body Vehicles" are vehicles that do not have a separate tractor and trailer and include but are not limited to:

(A) concrete mixers;

(B) on-road mobile cranes;

(C) on-road construction equipment.

(42) "Vehicle" is as defined in Vehicle Code Section 670.

(43) "Verified Diesel Emission Control Strategy (VDECS)" is an emission control strategy that has been verified pursuant to the "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines" in Title 13, California Code of Regulations, commencing with section 2700, and incorporated by reference.

(44) "Yard Truck" means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as a utility tractor rig (UTR), yard tractor, yard goat, yard hustler, or prime mover.

(d) *Requirements and Compliance Deadlines.* Drayage trucks subject to this regulation must meet the following requirements by the compliance deadlines detailed in both Phase 1 AND Phase 2.

(1) *Phase 1:*

(A) By December 31, 2009, all drayage trucks must be equipped with:

1. 1994–2003 model year engine certified to California or federal emission standards and a level 3 VDECS for PM emissions;

or,

2. 2004 or newer model year engine certified to California or federal emission standards;

or,

3. a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.

(B) After December 31, 2011, all drayage trucks with 2004 model year engines must be equipped with the highest level VDECS for PM emissions.

(C) After December 31, 2012, all drayage trucks with 2005–2006 model year engines must be equipped with the highest level VDECS for PM emissions.

(2) *Phase 2:* After December 31, 2013, all drayage trucks must be equipped with a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.

(3) *Drayage Truck Owner Requirements*

(A) Drayage truck owners shall:

1. meet all applicable requirements and deadlines set forth in Phases 1 and 2 above;

2. if an aftermarket level 3 VDECS is installed, be able to demonstrate that:

a. the VDECS has been verified by ARB for use with the engine and vehicle, as described in the Executive Order for the VDECS;

b. use of the vehicle must be consistent with the conditions of the Executive Order for the VDECS;

c. the VDECS is installed in a verified configuration;

d. the engine met the engine manufacturer's operational specifications prior to the VDECS installation;

e. the VDECS label is visible;

f. the level 3 VDECS is mounted in a safe and secure manner on the vehicle consistent with provisions in (3)(A)(2)(c) above, and the fixed position of the level 3 VDECS does not obscure vehicle rear view or side mirror visibility in any way.

g. all emission control devices are functioning properly and maintained per manufacturer's specifications;

h. in the event of a failure or damage of an aftermarket level 3 VDECS or an OEM equivalent diesel emissions control system while the device is still under warranty, it has taken prompt action to repair or replace the device by the manufacturer or authorized dealer with the same level of VDECS or OEM equivalent diesel emissions control system within 45 days of first noticing or being notified of the failure or damage to the device.

i. it has adhered to the terms and conditions in the aftermarket manufacturer or OEM warranty governing the use of the device.

j. if the failure or damage to the level 3 VDECS or OEM equivalent diesel emissions control system occurs after expiration of the warranty period, it has taken prompt action to personally repair or replace the failed or damaged device with the same level VDECS or OEM equivalent diesel emissions control system available for the engine within 90 days of first noticing or being notified of the failure or damage to the device.

k. it has not misused, dismantled, or tampered with any components of the level 3 VDECS or OEM equivalent diesel emissions control system, except for purposes of recommended periodical maintenance by an authorized agent, or when it is necessary to detach the device to service the vehicle.

3. register with the DTR, according to subsection (e);

4. be able to demonstrate that the drayage truck operator has been informed about the information required under subsection (d)(5)(A)(4) for the dispatching motor carrier and instructed to provide such information to any enforcement personnel listed in subsection (i), upon request.

(B) Phase 1 compliance deadline extension:

1. Drayage truck owners may apply for a one-time, one-year, per-truck Phase 1 compliance deadline extension. The compliance deadline application must be either electronically filed or postmarked by June 1, 2009. To receive the Phase 1 compliance deadline extension, a drayage truck owner must demonstrate all of the following:

- the engine installed on his/her current truck is a California or federally certified 1994 – 2003 model year engine;
- the truck was registered with the DTR prior to June 1, 2009;
- no Level 3 diesel emission control technology verified by ARB for use on that combination of truck and engine was available at the time the extension was filed.

2. Compliance extension applications shall be submitted to ARB at:

CALIFORNIA AIR RESOURCES BOARD
DRAYAGE TRUCK PHASE 1 EXTENSION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or electronically through ARB's drayage truck website:
<http://www.arb.ca.gov/drayagetruck>

3. If after the one-year extension ARB verified technology is still unavailable, the truck owner must comply with the regulation within 90 days of the expiration of the extension by replacing the existing heavy duty truck and/or engine with a truck or engine that meets or exceeds the Phase 1 requirements.

(4) *Drayage Truck Operator Requirements*

Drayage truck operators shall, upon request, provide the dispatching motor carrier's contact information as detailed in subsection (d)(5)(A)(4) to authorized enforcement personnel as set forth in subsection (i).

(5) *Motor Carrier Requirements*

(A) Each motor carrier shall:

1. provide a copy of this regulation or an ARB approved summarized version to each drayage truck owner that it contracts with for deliveries to ports and intermodal rail yards;

2. only dispatch drayage trucks to a port or intermodal rail yard that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in subsection (d);

3. only dispatch drayage trucks to ports and intermodal rail yards that are registered and in good standing with the Drayage Truck Registry (DTR) and are DTR compliant;

4. demonstrate that it has only dispatched drayage trucks whose operators have been informed to provide the motor carrier information listed below, upon request, to enforcement personnel, as listed in subsection (i).

- the motor carrier's business name;
- contact person's name;
- motor carrier's street address, state, and zip code;
- contact person's business phone number.

5. keep a record of all dispatched drayage trucks containing the information set forth in (a) through (d) below for a minimum of five years from the dispatch date. Dispatch records are to be made available to enforcement personnel within 72 hours of an official written or oral request.

- truck dispatch date and time;
- bill of lading or tracking number;
- truck license plate number and issuing state;
- Drayage Truck Registry number.

(6) *Marine or Port Terminals and Intermodal Rail Yard Requirements*

(A) Starting September 30, 2009, marine or port terminals and intermodal rail yards shall collect the following information for each drayage truck subject to this regulation that enters the facility that is not DTR compliant as determined by information contained within the Drayage Truck Registry.

1. Dispatching motor carrier:

- business name of dispatching motor carrier;
- contact person's name;

- street address, state, zip code of the dispatching motor carrier;
- phone number of the dispatching motor carrier;
- bill of lading or tracking number.

2. Drayage truck:

- entry date and time;
- registered owner's name;
- operator's name;
- operator's license number;
- drayage truck's license plate number and state of issuance;
- drayage truck's vehicle identification number (VIN).

All information collected in subsection (d)(6) shall be kept for a period of not less than five years from the truck entry date and is to be made available to enforcement personnel within 72 hours of an official written or oral request.

(B) Marine or port terminals and intermodal rail yards shall report the information collected in subsection (A) above to their respective authorities according to schedule (A) below and in a format acceptable to their respective authority.

Schedule A: Terminal and Intermodal Rail Yard Reporting Schedule

<i>Date Truck Enters Terminal or Intermodal Rail Yard</i>	<i>Date by which Information is to be Reported to Port or Rail Authority</i>
January 1–March 31	April 15
April 1–June 30	July 15
July 1–September 30	October 15
October 1–December 31	January 15

(7) *Port Authorities and Rail Yard Authorities Requirements*

(A) Port and rail yard authorities shall respectively report the information collected by the port terminals and intermodal rail yards, as detailed in subsection (d)(6), to, and in a manner and format prescribed by, ARB according to Schedule B below. ARB reporting parameters are detailed on ARB's website

<http://www.arb.ca.gov/drayagetruck>

Schedule B: Port and Rail Yard Authority Reporting Schedule

<i>Date by which Information is to be Reported to the California Air Resources Board</i>
May 15
August 15
November 15
February 15

(B) Port and rail yard authorities shall ensure their respective terminals and/or intermodal rail yards abide by all Schedule A reporting deadlines.

(C) Rail yard authorities operating rail yards located greater than 80 miles from the nearest port with less than 100 average daily drayage truck visits for each calendar month starting January 2008, must complete and submit quarterly verification reports according to Schedule B and in a format approved by ARB.

The first quarterly verification report shall include average daily drayage truck visits for each calendar month starting with the effective date of the regulation and submitted to ARB according to schedules A and B above. Subsequent quarterly verification reports shall include average daily drayage truck visits for the three calendar months prior to each reporting date. Quarterly verification reports shall include, but are not limited to, the following information:

- reporting rail yard authority contact information;
- rail yard name and address;
- average daily drayage truck visits by calendar month.

Quarterly verification applications and additional guidelines can be obtained by contacting ARB at:

CALIFORNIA AIR RESOURCES BOARD
RAIL YARD DAILY TRUCK VERIFICATION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or electronically through ARB's drayage truck website:
<http://www.arb.ca.gov/drayagetruck>

(e) *Drayage Truck Registry Requirements*

(1) *Truck Owner Requirements*

(A) Owners of all drayage trucks doing business at a port or intermodal rail yard prior to September 30, 2009 and intending to continue operations after that date must register with the DTR database by September 30, 2009.

(B) Drayage trucks intending to begin operations at a port or intermodal rail yard after September 30, 2009 must be registered with the DTR database prior to commencing operations.

(C) Owners of all drayage trucks covered by the regulation must provide the following information to ARB or its designee by mail to the address in subsection (e)(2) or electronically through ARB's DTR website <http://www.arb.ca.gov/drayagetruck>. The information shall include but may not be limited to:

1. truck owner name, address, and contact information (e.g. phone number, email address, fax number);
2. engine make, model, and model year;
3. vehicle identification number (VIN);
4. vehicle license number and state of issuance;
5. compliance status, which shall include:
 - a. identifying whether the drayage truck has complied with the requirements of Phases 1 and 2, set forth in subsection (d) above;
 - b. if so, how was compliance achieved (e.g. new compliant truck or description of the level 3 VDECS that was used), who did the installation work, and when was it completed;
 - c. if not, identifying when the drayage truck is scheduled to come into compliance under Phases 1 or 2.

(D) After filing the initial application, the drayage truck owner shall within 30 days of bringing a truck into compliance with Phase 1 or Phase 2, update the DTR with the vehicle's compliance status information and any other changes to the vehicle's ownership, DMV registration status, or participation status in IRP.

(2) *Mailing Address for Filing Initial Applications and Updates.* Drayage truck owners shall submit DTR applications and any updated information to ARB at:

CALIFORNIA AIR RESOURCES BOARD
C/O DRAYAGE TRUCK REGISTRY, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

(3) Failure to register with the DTR or submittal of false information is a violation of state law and subject to civil or criminal penalty.

(f) *Annual Port or Rail Yard Exemption.*

(1) *Annual Exemption.* An annual exemption may be granted, under limited circumstances, by the ARB Executive Officer to ports or rail yards. An exemption may cover a clearly defined portion or the entirety of a port or rail yard. The Executive Officer will exempt a port or rail yard that is able to demonstrate one or more of the following:

(A) port or rail yard land is not typically used for truck traffic and its primary function or location does not include or attract drayage trucks covered under this regulation (e.g. a shoreline animal sanctuary);

(B) the overwhelming majority of trucks accessing the port or rail yard are exempted under this regulation (e.g. a port where only dedicated auto transports are in service).

(2) *The Exemption Request*

(A) a port or rail yard requesting an exemption shall mail the request to:

CALIFORNIA AIR RESOURCES BOARD
PORT / RAIL YARD EXEMPTION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or may send it electronically to ARBs' website <http://www.arb.ca.gov/drayagetruck> using the request form available on the site.

(B) the request must be completed and submitted annually (via the same website or address listed above) no later than January 1 of the year prior to the exemption year (e.g. a 2010 year exemption application must be completed and submitted by January 1, 2009);

(C) the request will be approved or disapproved by the Executive Officer no later than July 1, of the year prior to the exemption year. The

Executive Officer will then issue an exemption to be valid for the specified port or rail yard for the specified exemption year.

(g) *Penalties.* Any person who fails to comply with the performance requirements of this regulation, who fails to submit any information, report, or statement required by this regulation, or who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, and 43016 of the Health and Safety Code. In assessing penalties, the Executive Officer will consider factors, including but not limited to the willfulness of the violation, the length of time of noncompliance, whether compliance was attempted, and the magnitude of noncompliance.

(h) *Right of Entry.* For the purpose of inspecting on-road vehicles covered in this regulation, and their records to determine compliance with these regulations, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where on-road vehicles are located or on-road vehicle records are kept.

(i) *Enforcement.* Enforcement of this section may be carried out by authorized representatives of ARB, port and rail yard authorities; peace officers as defined in California Penal Code, Title 3, chapter 4.5, sections 830 et seq. and their respective law enforcement agencies; and authorized representatives of air pollution control or air quality management districts.

(j) *Relationship to Other Law.* Nothing in this section allows drayage trucks to operate in violation of other applicable law, including, but not limited to:

- (1) California Vehicle Code;
- (2) California Health and Safety Code;
- (3) division 3, title 13, California Code of Regulations;
- (4) any applicable ordinance, rule, or requirement as stringent as, or more stringent than, than the requirements of subsection (d) of this regulation.

(k) *Severability.* If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023 and 43600, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, 42410, 40717.9, 43013, 43016, 43018, 43023 and 43600, Health and Safety Code.

HISTORY

1. New section filed 11-24-2008; operative 12-24-2008 (Register 2008, No. 48).
2. Amendment of subsection (b)(1), new subsections (c)(1)-(c)(1)(C), (c)(10) and (c)(21), subsection renumbering, amendment of newly designated subsections (c)(13) and (c)(15), amendment of subsection (d)(1), new subsection (d)(1)(A)-(C) and redesignation of former subsections (d)(1)(A)-(C) as new subsections (d)(1)(A)1.-3. filed 12-3-2009; operative 1-2-2010 (Register 2009, No. 49).

Article 5. Approval of Systems Designed to Convert Motor Vehicles to Use Fuels Other Than the Original Certification Fuel or to Convert Motor Vehicles for Emission Reduction Credit or to Convert Hybrid Electric Vehicles to Off-Vehicle Charge Capable Hybrid Electric Vehicles

§ 2030. Liquefied Petroleum Gas or Natural Gas Retrofit Systems.

- (a) Applicable Standards and Test Procedures.

The standards and test procedures for approval of systems designed to convert 1993 and earlier model year motor vehicles to use liquefied petroleum gas or natural gas fuels are contained in "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels" adopted by the state board on April 16, 1975, as amended November 21, 1995. The standards and test procedures for approval of systems designed to convert 1994 and subsequent model year motor vehicles to use liquefied petroleum gas or natural gas fuels are contained in "California Certification and Installation Procedures for Alternative Fuel Retrofit Systems for Motor Vehicles Certified for 1994 and Subsequent Model Years and for all Model Year Motor Vehicle Retrofit Systems Certified for Emission Reduction Credit," adopted by the State Board March 11, 1993, as amended September 25, 1997. At the option of the retrofit system manufacturer, the standards and test procedures for approval of systems designed to convert 1994 and subsequent model year vehicles to use liquefied petroleum gas or natural gas fuels may be used for approval of systems designed to convert 1993 and earlier model year motor vehicles to use liquefied petroleum gas or natural gas fuels in lieu of the "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels."

(b) Implementation Phase—In Schedule.

Notwithstanding subsection (a), a retrofit system manufacturer may apply "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels" to certify retrofit systems for 1994 and 1995 model-year vehicles in accordance with the following implementation phase-in schedule. Each manufacturer may certify a maximum of 85 percent of its total 1994 model-year engine family retrofit systems, 45 percent of its total 1995 model-year systems, and 45 percent of its total 1996 model-year systems, according to the requirements of these test procedures and "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Alcohol or Alcohol/Gasoline Fuels", adopted by the State Board on April 28, 1983, as amended November 21, 1995. The remaining percentage of each manufacturer's certified 1994, 1995, and 1996 model-year engine family retrofit systems and all of 1997 and subsequent model-year engine family retrofit systems shall be certified according to "California Certification and Installation Procedures for Alternative Fuel Retrofit Systems For Motor Vehicles Certified For 1994 and Subsequent Model Years and for all Model Year Motor Vehicle Retrofit Systems Certified for Emission Reduction Credit." The percentages shall be determined from the total number of retrofit systems certified and shall be met prior to the end of the next respective calendar year. "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels" shall not be applied to certify a retrofit system for installation on a transitional low-emission vehicle ("TLEV"), low-emission vehicle ("LEV"), or ultra-low-emission vehicle ("ULEV") or to certify a retrofit system designed to convert

a vehicle to TLEV, LEV, or ULEV emission standards (as defined in Section 1960.1, Title 13, California Code of Regulations), or to certify a retrofit system for emission reduction credits.

NOTE: Authority cited: Sections 39515, 39600, 39601 and 43006, Health and Safety Code. Reference: Sections 43000, 43004, 43006, 43008.6, 43013 and 43108, Health and Safety Code; and Sections 27156, 38391 and 38395, Vehicle Code.

HISTORY

1. Amendment filed 4-28-75; effective thirtieth day thereafter (Register 75, No. 18).
2. Amendment filed 3-16-77; effective thirtieth day thereafter (Register 77, No. 12).
3. Amendment filed 5-21-81; effective thirtieth day thereafter (Register 81, No. 21).
4. Amendment of Article 5 and Section 2030 headings filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).
5. Amendment filed 10-18-84; effective thirtieth day thereafter (Register 84, No. 42).
6. Amendment of section heading, text and NOTE filed 5-7-93; operative 6-7-93 (Register 93, No. 19).
7. Amendment of subsection (a) filed 6-8-95; operative 6-8-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 23).
8. Amendment of article 5 heading and subsections (a) and (b) filed 2-5-96; operative 3-6-96 (Register 96, No. 6).
9. Amendment of subsection (a) filed 9-25-97; operative 9-25-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).
10. Amendment of article heading filed 1-14-2010; operative 2-13-2010 (Register 2010, No. 3).

§ 2031. Alcohol or Alcohol/Gasoline Fuels Retrofit Systems.

(a) Applicable Standards and Test Procedures.

The standards and test procedures for approval of systems designed to convert 1993 and earlier model year motor vehicles to use alcohol or alcohol/gasoline fuels in lieu of the original certification fuel system are contained in "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Alcohol or Alcohol/Gasoline Fuels," adopted by the State Board April 28, 1983 as amended November 21, 1995. The standards and test procedures for approval of systems designed to convert 1994 and subsequent model year motor vehicles to use alcohol or alcohol/gasoline fuels are contained in "California Certification and Installation Procedures for Alternative Fuel Retrofit Systems for Motor Vehicles Certified for 1994 and Subsequent Model Years and for all Model Year Motor Vehicle Retrofit Systems Certified for Emission Reduction Credit," adopted by the State Board March 11, 1993, as amended September 25, 1997. At the option of the retrofit system manufacturer, the standards and test procedures for approval of systems designed to convert 1994 and subsequent model year motor vehicles to use alcohol or alcohol/gasoline fuels may be used for approval of systems designed to convert 1993 and earlier model year motor vehicles to use alcohol or alcohol/gasoline fuels in lieu of the "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Alcohol or Alcohol/Gasoline Fuels."

(b) Implementation Phase—In Schedule.

[The next page is 236.27.]

(2) Records Kept in Mobile Cargo Handling Equipment. For each mobile cargo handling equipment, the owner or operator shall keep the following information affixed to the driver's side door jamb, or another readily accessible location known by the owner or operator of each mobile cargo handling equipment, in the form of a legible and durable label or in an alternative form approved by the Executive Officer or designee that is immediately accessible at the time of inspection by the enforcement agency:

(A) For each installed diesel emission control strategy, label information as specified in title 13, CCR, section 2706(g), and the installation date; or

(B) For each mobile cargo handling equipment that has installed a certified on-road or off-road engine in order to comply with subsection (e), the engine make, model, and installation date; or

(C) Engine model year and planned compliance date; or

(D) Engine model year and retirement date for an engine for which an owner or operator is claiming an extension pursuant to paragraph (f)(1); or

(E) Engine model year and beginning and end date for which an owner or operator is claiming an extension pursuant to paragraph (f)(2); or

(F) Engine model year and beginning and ending date of the test plan for an engine for which an owner or operator is claiming an extension pursuant to paragraph (f)(3); or

(G) Engine model year and date of purchase of replacement engine or equipment for which an owner or operator is claiming an extension pursuant to paragraph (f)(4); or

(H) Engine model year, date of installation of VDECS, and supporting documentation for public funding program, for the engine and equipment for which an owner or operator is claiming an extension pursuant to paragraph (f)(5).

(3) Each owner or operator shall maintain these records for each mobile cargo handling equipment until it is sold outside of the State of California or is no longer used at a port or intermodal rail yard in the State of California. If ownership is transferred, the seller shall convey the records to the buyer.

(j) Reporting Requirements

(1) Compliance Plan. By January 31, 2007, each owner or operator of in-use mobile cargo handling equipment subject to the requirements of subsection (e) shall provide the following information to the Executive Officer:

(A) Information listed in paragraph (i)(1), and

(B) An identification of the planned control strategy (Compliance Plan) for each mobile cargo handling equipment listed in paragraph (i)(1) that, when implemented, will result in compliance with subsection (e). If applicable, the information should include the Executive Order number issued by the Executive Officer for a VDECS that has been approved by the Executive Officer through the Verification Procedure. The Compliance Plan is not binding and can be changed by the owner or operator prior to the required compliance date(s).

(2) Demonstration of Compliance. By no later than the earliest applicable compliance date specified in subsections (e)(2)(B) or (e)(3)(C), for each in-use cargo handling equipment subject to the requirements of subsection (e), the owner or operator shall provide the following information to the Executive Officer:

(A) Information listed in (i)(1), and

(B) An identification of the control strategy implemented for each mobile cargo handling equipment in accordance with the requirements of subsection (e) for purposes of demonstrating compliance.

(3) Annual Reporting. Each terminal owner or operator shall submit an annual report to the Executive Officer by January 31, 2007, and by each January 31 annually, through 2016 as described below:

(A) Company name;

(B) Contact name, phone number, address, e-mail address;

(C) Address of equipment, including name of port or intermodal rail yard where equipment is operated;

(D) The population, as of January 1 of that year, of equipment in each yard truck model year group and each non-yard truck model year group; and

(E) A signed affidavit stating the completeness and accuracy of the annual report.

(4) Reporting for Off-Road Equipment that Does Not Handle Cargo at any Time. Each terminal owner or operator to whom subsection (c)(3) applies, shall submit a report to the Executive Officer by January 31, 2007, as described below:

(A) Owner or Operator Contact Information

1. Company name

2. Contact name, phone number, address, e-mail address

3. Address of equipment

(B) Equipment and Engine Information

1. Make of equipment and engine

2. Model of equipment and engine

3. Engine family (if applicable)

4. Engine serial number

5. Year of manufacture of equipment and engine (if unable to determine, approximate age)

6. Rated brake horsepower

7. Control equipment (if applicable)

a. Type of diesel emission control strategy

b. Serial number of installed diesel emission control strategy

c. Manufacturer of installed diesel emission control strategy

d. Model of installed diesel emission control strategy

e. Installation date of installed diesel emission control strategy

f. Level of control (1, 2, or 3)

(C) Fuel(s) Used

1. CARB Diesel

2. Alternative diesel fuel (specify)

3. Alternative fuel (specify)

4. Combination (dual fuel) (specify)

5. Other (specify)

(D) Operation Information

1. Describe general use of engine

2. Typical load (percent of maximum bhp rating)

3. Typical annual hours of operation

4. If seasonal, months of year operated and typical hours per month operated

(k) Right of Entry

An agent or employee of the Air Resources Board has the right of entry to port and intermodal rail yard cargo handling facilities for the purpose of inspecting on-road and off-road cargo handling equipment and their records to determine compliance to these regulations.

(l) Prohibitions

No person who is engaged in this State in the business of selling to an ultimate purchaser, or renting or leasing new or used mobile cargo handling equipment, including, but not limited to, manufacturers, distributors, and dealers, shall sell, offer for sell, import, deliver, purchase, receive, or otherwise acquire a new or used mobile cargo handling equipment for the purpose of selling, renting, or leasing in California, that does not meet the performance requirements of this regulation.

(m) Severability

If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

(n) Submittal of Documents

(A) All documents required under this regulation to be submitted to the Executive Officer shall be submitted as follows:

CALIFORNIA AIR RESOURCES BOARD
STATIONARY SOURCE DIVISION, CARGO HANDLING EQUIPMENT
P.O. BOX 2815
SACRAMENTO, CALIFORNIA 95812-2815

(B) An alternative method, including electronic submittals, may be approved by the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601, 39618, 39658, 39659, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, 42400.6, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42410, 43013 and 43018, Health and Safety Code. Reference: Sections 39618, 39650, 39658, 39659, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, 42400.6, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42410, 43013 and 43018, Health and Safety Code.

HISTORY

1. New section filed 12-1-2006; operative 12-1-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 48).
2. Amendment of subsections (a)(3)-(4), new subsections (a)(5)-(6), amendment of subsections (d)(4), (d)(7), (d)(33) and (d)(54) filed 12-3-2009; operative 12-3-2009 pursuant to Government Code section 11343.4(c) with respect to all equipment other than street sweepers; operative with respect to street sweepers upon filing of proposed section 2025 (Register 2009, No. 49).

Chapter 10. Mobile Source Operational Controls

Article 1. Motor Vehicles

§ 2480. Airborne Toxic Control Measure to Limit School Bus Idling and Idling at Schools.

(a) Purpose. This airborne toxic control measure seeks to reduce public exposure, especially school age children's exposure, to diesel exhaust particulate matter and other toxic air contaminants by limiting unnecessary idling of specified vehicular sources.

(b) Applicability. Except as provided in subsection (d), this section applies to the operation of every school bus, transit bus, school pupil activity bus, youth bus, general public paratransit vehicle, and other commercial motor vehicle as defined in subsection (h).

(c) Idling Control Measure.

(1) A driver of a school bus, school pupil activity bus, youth bus, or general public paratransit vehicle:

(A) must turn off the bus or vehicle engine upon stopping at a school or within 100 feet of a school, and must not turn the bus or vehicle engine on more than 30 seconds before beginning to depart from a school or from within 100 feet of a school; and

(B) must not cause or allow a bus or vehicle to idle at any location greater than 100 feet from a school for:

- (i) more than five consecutive minutes; or
- (ii) a period or periods aggregating more than five minutes in any one hour.

(2) A driver of a transit bus or of a commercial motor vehicle not identified in (c)(1):

(A) must turn off the bus or vehicle engine upon stopping at a school and must not turn the bus or vehicle engine on more than 30 seconds before beginning to depart from a school; and

(B) must not cause or allow a bus or vehicle to idle at any location within 100 feet of, but not at, a school for:

- (i) more than five consecutive minutes; or
- (ii) a period or periods aggregating more than five minutes in any one hour.

(3) A motor carrier of a school bus, school pupil activity bus, youth bus, or general public paratransit vehicle must ensure that:

(A) the bus or vehicle driver, upon employment and at least once per year thereafter, is informed of the requirements in (c)(1), and of the consequences, under this section and the motor carrier's terms of employment, of not complying with those requirements;

(B) all complaints of non-compliance with, and enforcement actions related to, the requirements of (c)(1) are reviewed and remedial action is taken as necessary; and

(C) records of (3)(A) and (B) are kept for at least three years and made available or accessible to enforcement personnel as defined in subsection (g) within three business days of their request.

(4) A motor carrier of a transit bus or of a commercial motor vehicle not identified in (c)(1) must ensure that:

(A) the bus or vehicle driver, upon employment and at least once per year thereafter, is informed of the requirements in (c)(2), and of the consequences, under this section and the motor carrier's terms of employment, of not complying with those requirements;

(B) all complaints of non-compliance with, and enforcement actions related to, the requirements of (c)(2) are reviewed and remedial action is taken as necessary; and

(C) records of (4)(A) and (B) are kept for at least three years and made available or accessible to enforcement personnel as defined in subsection (g) within three business days of their request.

(d) Exemptions

This section does not apply for the period or periods during which:

- (1) idling is necessary while stopped;
- (A) for an official traffic control device;
- (B) for an official traffic control signal;
- (C) for traffic conditions over which the driver has no control, including, but not limited to: stopped in a line of traffic; or
- (D) at the direction of a peace officer;

(2) idling is necessary to ascertain that the school bus, transit bus, school pupil activity bus, youth bus, general public paratransit vehicle, or other commercial motor vehicle is in safe operating condition and equipped as required by all provisions of law, and all equipment is in good working order, either as part of the driver's daily vehicle inspection, or as otherwise needed;

(3) idling is necessary for testing, servicing, repairing, or diagnostic purposes;

(4) idling is necessary, for a period not to exceed three to five minutes (as per the recommendation of the manufacturer), to cool down a turbo-charged diesel engine before turning the engine off;

(5) idling is necessary to accomplish work for which the vehicle was designed, other than transporting passengers, for example:

(A) collection of solid waste or recyclable material by an entity authorized by contract, license, or permit by a school or local government;

(B) controlling cargo temperature; or

(C) operating a lift, crane, pump, drill, hoist, mixer, or other auxiliary equipment other than a heater or air conditioner;

(6) idling is necessary to operate:

(A) a lift or other piece of equipment designed to ensure safe loading, unloading, or transport of persons with one or more disabilities; or

(B) a heater or an air conditioner of a bus or vehicle that has, or will have, one or more children with exceptional needs aboard;

(7) idling is necessary to operate defrosters, heaters, air conditioners, or other equipment to ensure the safety or health of the driver or passengers, or as otherwise required by federal or State motor carrier safety regulations; or

(8) idling is necessary solely to recharge a battery or other energy storage unit of a hybrid electric bus or vehicle.

(e) Relationship to Other Law

Nothing in this section allows idling in excess of other applicable law, including, but not limited to:

- (1) Title 13 California Code of Regulations Section 1226;
- (2) Vehicle Code Section 22515; or
- (3) any local ordinance or requirement as stringent as, or more stringent than, this section.

(f) Penalties

(1) For each violation of subsection (c)(1), a driver of a school bus, school pupil activity bus, youth bus, or general public paratransit vehicle is subject to the civil and criminal penalties specified in Health and Safety Code section 39642.

(2) For each violation of subsection (c)(2), a driver of a transit bus or other commercial motor vehicle is subject to the civil and criminal penalties specified in Health and Safety Code section 39642.

(3) For each violation of subsection (c)(3), a motor carrier of a school bus, school pupil activity bus, youth bus, or general public paratransit vehicle is subject to the civil and criminal penalties specified in Health and Safety Code section 39642.

(4) For each violation of subsection (c)(4), a motor carrier of a transit bus or other commercial motor vehicle is subject to the civil and criminal penalties specified in Health and Safety Code section 39642.

(g) Enforcement. This section may be enforced by the Air Resources Board, peace officers as defined in California Penal Code, title 3, chapter 4.5, Sections 830 et seq. and their respective law enforcement agencies' authorized representatives, and air pollution control or air quality management districts.

(h) Definitions.

The following terms are defined for the purposes of this section:

(1) Children With Exceptional Needs. "Children with exceptional needs" means children meeting eligibility criteria described in Education Code Section 56026.

(2) Commercial Motor Vehicle. "Commercial Motor Vehicle" means any vehicle or combination of vehicles defined in Vehicle Code Section 15210(b) and any other motor truck with a gross vehicle weight rating of 10,001 pounds or more, with the following exceptions:

(A) a zero emission vehicle; or

(B) a pickup truck defined in Vehicle Code Section 471.

(3) Driver. "Driver" means any person who drives or is in actual physical control of a vehicle.

(4) General Public Paratransit Vehicle. "General public paratransit vehicle" means any motor vehicle defined in Vehicle Code Section 336, other than a zero emission general public paratransit vehicle, that is transporting school pupils at or below the 12th grade level to or from public or private schools or public or private school activities.

(5) Gross Vehicle Weight Rating. "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

(6) Hybrid Electric Bus or Vehicle. "Hybrid electric bus or vehicle" means any school bus, transit bus, school pupil activity bus, youth bus, general public paratransit vehicle, or other commercial motor vehicle equipped with at least the following two sources of motive energy on board:

(A) an electric drive motor that must be used to partially or fully drive the bus or vehicle wheels; and

(B) one of the following:

(i) an internal combustion engine;

(ii) a turbine; or

(iii) a fuel cell.

(7) Idling. "Idling" means the engine is running while the bus or vehicle is stationary.

(8) Motor Carrier. "Motor carrier" means the registered owner, lessee, licensee, school district superintendent, or bailee of any school bus, transit bus, school pupil activity bus, youth bus, general public paratransit vehicle, or other commercial motor vehicle who operates or directs the operation of any such bus or vehicle on either a for-hire or not-for-hire basis.

(9) Motor Truck. "Motor truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(10) Official Traffic Control Device. "Official traffic control device" means any sign, signal, marking or device, consistent with Section 21400 of the Vehicle Code, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, but does not include islands, curbs, traffic barriers, speed humps, speed bumps, or other roadway design features.

(11) Official Traffic Control Signal. "Official traffic control signal" means any device, whether manually, electrically, or mechanically oper-

ated, by which traffic is alternately directed to stop and proceed and which is erected by authority of a public body or official having jurisdiction.

(12) School. "School" means any public or private school used for the purposes of education and instruction of more than 12 school pupils at or below the 12th grade level, but does not include any private school in which education and instruction is primarily conducted in private homes. The term includes any building or structure, playground, athletic field, or other area of school property. The term excludes unimproved school property.

(13) School Bus. "School bus" means any school bus defined in Vehicle Code Section 545, except a zero emission school bus.

(14) School Pupil Activity Bus. "School pupil activity bus" means any bus defined in Section 546 of the Vehicle Code, except a zero emission school pupil activity bus.

(15) Transit Bus. "Transit bus" means any bus defined in Vehicle Code Section 642, except a zero emission transit bus.

(16) Youth Bus. "Youth bus" means any bus defined in Vehicle Code Section 680, except a zero emission youth bus.

(17) Zero Emission School Bus, Transit Bus, School Pupil Activity Bus, Youth Bus, General Public Paratransit Vehicle, or Other Commercial Motor Vehicle. A "zero emission school bus, transit bus, school pupil activity bus, youth bus, general public paratransit vehicle, or other commercial motor vehicle" means any bus or vehicle certified to zero-emission standards.

NOTE: Authority cited: Sections 39600, 39601, 39658, 39667 and 39674, Health and Safety Code; and *Western Oil & Gas Assn. v. Orange County Air Pollution Control Dist.* (1975) 14 Cal.3d.411. Reference: Sections 39002, 39003, 39027, 39500, 39600, 39640, 39641, 39642, 39650, 39655, 39656, 39657, 39658, 39659, 39662, 39665, 39674, 39675 and 42403.5, Health and Safety Code; and Section 27153, Vehicle Code.

HISTORY

1. New chapter 10, article 1 (section 2480) and section filed 6-16-2003; operative 7-16-2003 (Register 2003, No. 25).

2. Change without regulatory effect amending subsections (f)(1)-(4) and NOTE filed 3-25-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 13).

§ 2485. Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.

(a) *Purpose.* The purpose of this airborne toxic control measure is to reduce public exposure to diesel particulate matter and other air contaminants by limiting the idling of diesel-fueled commercial motor vehicles.

(b) *Applicability.* This section applies to diesel-fueled commercial motor vehicles that operate in the State of California with gross vehicular weight ratings of greater than 10,000 pounds that are or must be licensed for operation on highways. This specifically includes:

(1) California-based vehicles; and

(2) Non-California-based vehicles.

(c) *Requirements.*

(1) *Idling Restriction.* On or after February 1, 2005, the driver of any vehicle subject to this section shall comply with the following requirements, except as noted in subsection (d) below:

(A) the driver shall not idle the vehicle's primary diesel engine for greater than 5.0 minutes at any location.

(B) the driver shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5.0 minutes at any location when within 100 feet of a restricted area.

(2) *Use of Alternative Technologies.*

(A) On or after January 1, 2008, the driver shall not operate an internal combustion APS on any vehicle equipped with a 2007 and subsequent model year primary diesel engine unless the vehicle is:

1. equipped with an APS meeting the emissions performance requirements found in subsection (c)(3)(A), below; and

2. the vehicle is equipped with a label meeting the requirements pursuant to section 35.B.4 of the "California Exhaust Emission Standards

and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles,” as incorporated by reference in title 13, CCR, section 1956.8(b).

(B) On or after January 1, 2008, the driver shall not operate a fuel-fired heater on any vehicle equipped with a 2007 and subsequent model year primary diesel engine unless the fuel-fired heater meets the emissions performance requirements found in subsection (c)(3)(B), below;

(C) On or after January 1, 2008, the driver of a vehicle equipped with a 2006 or older model year primary diesel engine may use and operate in California any certified internal combustion APS with or without the additional PM control specified in subsection (c)(3)(A)1. or any other certified alternative idling reduction technology.

(3) *Compliance Requirements.* As an alternative to idling the primary engine, diesel engines/vehicles may, as an option, be equipped with alternative technologies, as listed and defined below in (A), (B), and (C) of this subsection. If so equipped, these technologies are subject to the following requirements:

(A) *Internal Combustion APS.*

1. In order to operate in California, an APS utilizing an internal combustion engine must comply with applicable California off-road and/or federal non-road emission standards and test procedures for its fuel type and power category. In addition, diesel-fueled APSs installed on vehicles equipped with primary engines certified to the 2007 and subsequent model year heavy-duty diesel engine standards, pursuant to section 1956.8(a)(2)(A) of title 13, CCR, shall either,

a. be equipped with a verified Level 3 in-use strategy for particulate matter control (see title 13, CCR, sections 2700 to 2710), or

b. have its exhaust routed directly into the vehicle's exhaust pipe, upstream of the diesel particulate matter aftertreatment device.

2. With advance Executive Officer approval, a certifying/verifying APS manufacturer may petition for an alternate compliance strategy other than described in (A)1. a. or b. in this subsection above. However, this provision is limited to manufacturers that can demonstrate, to the satisfaction of the Executive Officer, that their alternative strategy is equivalent (or “cleaner”), from an emissions standpoint, compared to the requirement described in (A)1. a. or b. in this subsection above. As an example, strategies that can use the available electric power infrastructure, instead of solely operating a diesel-fueled APS for engine and/or cab heating and cooling, may be able to use such a strategy to demonstrate compliance with these requirements.

(B) *Fuel-Fired Heaters.* Fuel-fired heaters must comply with the applicable California emission standards and test procedures as specified in the Low Emission Vehicle program requirements found in title 13, CCR, subsections 1961(a)(15) and (d), or in Part I.E.1.13 of the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles,” as incorporated by reference in title 13, CCR, section 1961(d). However, the specified requirement that limits fuel-fired heaters from being operated above 40°F does not apply.

(C) *Other Idle Reduction Technologies.* Other technologies that will reduce idling emissions may also be used, including the use of batteries, fuel cells, power inverter/chargers for on-shore electrical power, on-shore electric power infrastructure also known as truck stop electrification, and other technologies that produce minimal or no emissions. With the exception of battery and fuel cell powered APSs, power inverter/chargers, and electric power infrastructure, the use of other technologies are subject to advance Executive Officer approval and must be at least as effective in reducing idling emissions as the technologies described in subsections (c)(3)(A), above, or the NOx idling emission standard specified in title 13, CCR, section 1956.8(a)(6)(C). The Executive Officer shall use good engineering judgment and test data to determine if an idle reduction technology provides idling emission controls equivalent to the standards specified in subsection (c)(3)(A) above, or in title 13, CCR, section 1956.8(a)(6)(C).

(D) *Labeling Requirements.* 2007 and subsequent model year commercial diesel vehicles equipped with an internal combustion APS meet-

ing the requirements specified in subsection (c)(3)(A) shall have a label affixed to the hood of the vehicle to allow operation of the APS in California. The labels shall meet the requirements specified in section 35.B.4 of the “California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles,” as incorporated by reference in title 13, CCR, section 1956.8(b).

(d) *Exceptions.*

(1) Except when a vehicle is located within 100 feet of a restricted area, subsection (c)(1)(A) does not apply, if the vehicle is equipped with

(A) a primary diesel engine meeting the optional NOx idling emission standard pursuant to title 13, CCR, section 1956.8(a)(6)(C); and

(B) a label meeting the requirements pursuant to section 35.B.4 of the “California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles,” as incorporated by reference in title 13, CCR, section 1956.8(b).

(2) Subsection (c)(1) does not apply for the period or periods during which

(A) a bus is idling for

1. up to 10.0 minutes prior to passenger boarding, or

2. when passengers are onboard;

(B) prior to January 1, 2008, idling of the primary diesel engine is necessary to power a heater, air conditioner, or any ancillary equipment during sleeping or resting in a sleeper berth. This provision does not apply when operating within 100 feet of a restricted area;

(C) idling when the vehicle must remain motionless due to traffic conditions, an official traffic control device, or an official traffic control signal over which the driver has no control, or at the direction of a peace officer, or operating a diesel-fueled APS or other device at the direction of a peace officer;

(D) idling when the vehicle is queuing that at all times is beyond 100 feet from any restricted area;

(E) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices when forced to remain motionless due to immediate adverse weather conditions affecting the safe operation of the vehicle or due to mechanical difficulties over which the driver has no control;

(F) idling to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that such engine idling is mandatory for such verification;

(G) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices is mandatory for testing, servicing, repairing, or diagnostic purposes, including regeneration or maintenance of the exhaust emission control device during engine idling when the dashboard indicator light, if so equipped, is illuminated indicating that regeneration or maintenance is in progress;

(H) idling when positioning or providing a power source for equipment or operations, other than transporting passengers or propulsion, which involve a power take off or equivalent mechanism and is powered by the primary engine for:

1. controlling cargo temperature, operating a lift, crane, pump, drill, hoist, mixer (such as a ready mix concrete truck), or other auxiliary equipment;

2. providing mechanical extension to perform work functions for which the vehicle was designed and where substitute alternate means to idling are not reasonably available; or

3. collection of solid waste or recyclable material by an entity authorized by contract, license, or permit by a school or local government;

(I) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices when operating defrosters, heaters, air conditioners, or other equipment solely to prevent a safety or health emergency;

(J) idling of the primary diesel engine, operating a diesel-fueled APS, or operating other devices by authorized emergency vehicles while in the course of providing services for which the vehicle is designed;

(K) idling of military tactical vehicles during periods of training, testing, and deployment;

(L) idling when operating equipment such as a wheelchair or people assist lift as prescribed by the Americans with Disabilities Act;

(M) idling of armored cars in the course of providing services for which the vehicle is designed; and

(N) idling of workover rigs while performing work for which the vehicle is designed.

(c) *Relationship to Other Law.*

Nothing in this section allows idling in violation of other applicable law, including, but not limited to:

(1) California Vehicle Code Section 22515;

(2) Title 13, Section 2480, California Code of Regulations;

(3) California Health and Safety Code Section 40720; or

(4) any applicable ordinance, rule, or requirement as stringent as, or more stringent than, this section.

(f) *Enforcement.* This section may be enforced by the Air Resources Board; peace officers as defined in California Penal Code, title 3, chapter 4.5, Sections 830 et seq. and their respective law enforcement agencies' authorized representatives; and air pollution control or air quality management districts.

(g) *Penalties.* For violations of subsection (c)(1), (c)(2) or (c)(3), the driver of a subject vehicle is subject to a minimum civil penalty of 300 dollars and to criminal penalties as specified in the Health and Safety Code and the Vehicle Code.

(h) *Definitions.*

The following definitions apply to this section:

(1) "Armored car" is as defined in Vehicle Code Section 115

(2) "Authorized emergency vehicle" is as defined in Vehicle Code Section 165.

(3) "Auxiliary power system" or "APS" means any device that is permanently dedicated to the vehicle on which it is installed and provides electrical, mechanical, or thermal energy to the primary diesel engine, truck cab and/or sleeper berth, bus's passenger compartment or any other commercial vehicle's cab, as an alternative to idling the primary diesel engine.

(4) "Bus" means any vehicle defined in Title 13, California Code of Regulations, Section 2480, subsections (h) (13)–(16), inclusive or as defined in the Vehicle Code Section 233.

(5) "Commercial Motor Vehicle" means any vehicle or combination of vehicles defined in Vehicle Code Section 15210(b) and any other motor truck or bus with a gross vehicle weight rating of 10,001 pounds or more, except the following:

(A) a zero emission vehicle; or

(B) a pickup truck as defined in Vehicle Code Section 471.

(6) "Driver" is as defined in Vehicle Code Section 305.

(7) "Fuel-fired heater" means a fuel burning device that creates heat for the purpose of (1) warming the cab or sleeper berth compartment of a vehicle or (2) warming the engine oil and/or coolant for easy start-up of the vehicle's engine but does not contribute to the propulsion of the vehicle.

(8) "Gross vehicle weight rating" is as defined in Vehicle Code Section 350.

(9) "Highway" is as defined in Vehicle Code Section 360.

(10) "Idling" means the vehicle engine is running at any location while the vehicle is stationary.

(11) "Motor truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(12) "Official traffic control device" is as defined in Vehicle Code Section 440.

(13) "Official traffic control signal" is as defined in Vehicle Code Section 445.

(14) "Owner" is as defined in Vehicle Code Section 460.

(15) "Primary diesel engine" means the diesel-fueled engine used for vehicle propulsion.

(16) "Queuing" means (A) through (C)

(A) the intermittent starting and stopping of a vehicle;

(B) while the driver, in the normal course of doing business, is waiting to perform work or a service; and

(C) when shutting the vehicle engine off would impede the progress of the queue and is not practicable.

(D) Queuing does not include the time a driver may wait motionless in line in anticipation of the start of a workday or opening of a location where work or a service will be performed.

(17) "Restricted area" means any real property zoned for individual or multifamily housing units that has one or more of such units on it.

(18) "Safety or health emergency" means:

(A) a sudden, urgent, or usually unforeseen, occurrence; or

(B) a foreseeable occurrence relative to a medical or physiological condition.

(19) "Sleeper berth" is as defined in Title 13, California Code of Regulations, Section 1265.

(20) "Vehicle" is as defined in the Vehicle Code Section 670.

(21) "Workover rig" is as defined in Section 2449 of Title 13, California Code of Regulations.

NOTE: Authority cited: Sections 39600, 39601, 39614(b)(6)(A), 39658, 39667, 43000.5(d), 43013(b), 43013(h), 43018(b) and 43018(c), Health and Safety Code; and *Western Oil & Gas Assn. v. Orange County Air Pollution Control Dist.* (1975), 14 Cal.3d 411. Reference: Sections 39002, 39003, 39027, 39500, 39600, 39650, 39655, 39656, 39657, 39658, 39659, 39662, 39665, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3, 42402, 42402.1, 42402.2, 42402.3, 42403.5, 42410, 43013, 43018 and 43704, Health and Safety Code; Sections 305, 336, 350, 440, 445, 545, 546, 642, 680, 21400, 22452, 22515, 27153, 40001 and 40001(b)(5), Vehicle Code; and Sections 1201, 1900, 1962 and 2480, Title 13, California Code of Regulations.

HISTORY

1. New section filed 1-27-2005; operative 2-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 4).
2. Amendment filed 10-16-2006; operative 11-15-2006 (Register 2006, No. 42).
3. Change without regulatory effect amending subsection (g) and NOTE filed 3-4-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 10).
4. Amendment of subsections (d)(2)(K)–(L), new subsections (d)(2)(M)–(N), (h)(1) and (h)(21) and subsection renumbering filed 12-3-2009; operative 12-3-2009 pursuant to Government Code section 11343.4(c) (Register 2009, No. 49).

Chapter 12. Halogenated Refrigerants

§ 2500. Phase-Out of CFC Refrigerants in New Motor Vehicle Air Conditioning Systems for Model Years 1993 and Subsequent.

(a) *Applicability*

This section is applicable to all new 1993 and subsequent model year motor vehicles which are sold, supplied, or offered for sale in California on or after January 1, 1993, and which are either (1) certified pursuant to article 2 (commencing with section 1950) or article 7 (commencing with section 2047) of Chapter 1, Division 3, Title 13, California Code of Regulations; or (2) federally certified vehicles which are sold in California pursuant to Health and Safety Code Section 43102; or (3) heavy-duty diesel-powered motor vehicles, with the exception of such vehicles which are classified as "off-road vehicles" as defined in section 2421(a)(19) of Chapter 11, Division 3, Title 13, California Code of Regulations.

(b) *Definitions*

The definitions of this section supplement and are governed by the definitions set forth in Chapter 2 (commencing with section 39010), Part 1, Division 26 of the Health and Safety Code. The following definitions shall also govern the provisions of this section:

(1) "Authorized dealership" means any dealership to which a manufacturer supplies new motor vehicles for the purpose of reselling such vehicles to the ultimate purchaser.

(2) "Authorized supplier" means any person supplying, to a manufacturer's authorized dealership, air conditioning systems which may be installed in a new motor vehicle under warranty from the manufacturer.

(3) "Calendar quarter" means any of those three-month periods of time which start on the first days of January, April, July, and October.

(4) "CFC refrigerants" means any of the compounds commonly known as Chlorofluorocarbon-11 (CFC-11 or trichlorofluoromethane) or Chlorofluorocarbon-12 (CFC-12 or dichlorodifluoromethane).

(5) "Dealership" shall have the same meaning as the term "dealer", as defined in section 285 of the Vehicle Code.

(6) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her delegate.

(7) "Factory-installed" means installed at a manufacturer's motor vehicle production facility or port-of-entry facility.

(8) "Incomplete vehicle" means any vehicle which does not have the primary load carrying device or container attached by the original manufacturer.

(9) "Manufacturer" means any person engaged in the production of new motor vehicles from raw materials or new basic components, in order to sell such vehicles for money or other thing of value. Except as noted below, for a vehicle which is produced by one manufacturer and sold to a dealership or the ultimate purchaser by another manufacturer, the manufacturer for whom the requirements of this section are applicable shall be the manufacturer who sells, supplies, or offers the vehicle for sale to the dealership or the ultimate purchaser.

For incomplete vehicles only, the manufacturer for whom the requirements of this section are applicable shall be the initial manufacturer who predetermines the type of air conditioning system, if the air conditioning system that is ultimately installed is the same as the predetermined system. If the air conditioning system that is ultimately installed is not the same as the predetermined system, the manufacturer for whom the requirements of this section are applicable shall be the manufacturer who ultimately installs the air conditioning system. For the purposes of this section, "predetermine" means to either (1) manufacture or physically configure the vehicle in such a way, or (2) partially install the compressor, condenser, or other air conditioning components in such a way, that the specific configuration or installation is compatible with an air conditioning system that uses only one particular type of refrigerant.

(10) "Motor vehicle," as used in this section 2500, means those categories of motor vehicles that are specified in subsection (a).

(11) "Port-of-entry facility" means a facility at which a manufacturer's vehicles first arrive in the United States, and at which vehicles originally produced without vehicle air-conditioning systems may have such systems installed.

(12) "Small-volume manufacturer" means any manufacturer which sells less than 3000 new motor vehicles in California during the applicable model-year.

(13) "Vehicle air-conditioner" means any mechanical vapor compression refrigeration equipment used to cool the driver's or passenger compartment of any motor vehicle. "Vehicle air-conditioning system" has the same meaning as "vehicle air-conditioner."

(c) Percentage of Air-Conditioner-Equipped New Motor Vehicles Which May Use CFC Refrigerants for Vehicle Air Conditioning.

(1) Unless an applicable exemption has been granted pursuant to subsection (e), each manufacturer's percentage of air-conditioner equipped new motor vehicles that are sold, supplied, or offered for sale in California, and use or contain any CFC refrigerant for air-conditioning, shall not exceed the following percentages for the specified model years during the specified time periods:

<i>Model Year</i>	<i>Time Period</i>	<i>Maximum Vehicle Percentage</i>
1993 and 1994	January 1, 1993– December 31, 1993	90*
1994 and 1995	January 1, 1994– December 31, 1994	75*
1995	September 1, 1994– December 31, 1994	10

*These requirements shall not apply to small volume manufacturers.

Compliance with the "maximum vehicle percentage" requirements shall be determined as set forth in subsections (d)(3) and (d)(4).

(2) Effective January 1, 1995, no person shall sell, supply, or offer for sale in California any new 1995 or later model-year motor vehicle using any CFC refrigerant for vehicle air conditioning.

(3) Unless an applicable exemption has been granted pursuant to subsection (e), any person who fails to meet the requirements of subsections (c)(1) or (c)(2) shall be subject to the civil penalties specified in Health and Safety Code section 44474. For the purposes of Health and Safety Code section 44474:

(A) Any cause of action against a manufacturer under subsection (c) shall be deemed to accrue on the date(s) when the records required pursuant to subsection (d)(4) are submitted by a manufacturer to the Executive Officer, and

(B) A separate "incident" of violation shall be deemed to have occurred: 1. for each new motor vehicle which is sold, supplied, or offered for sale in California in excess of the allowable percentages specified in subsection (c)(1); or 2. for each new motor vehicle which is sold, supplied, or offered for sale in violation of subsection (c)(2); or 3. for each day in which a manufacturer fails to submit any required report by the time deadlines specified in subsection (d).

(d) Reporting Requirements and Compliance Determination

(1) No later than 30 days prior to the start of each calendar year, each manufacturer shall submit to the Executive Officer a good faith statement describing whether, during the following calendar year, compliance with the phase-out percentages specified in subsection (c)(1) will be achieved, or whether an exemption will be applied for.

(2) Commencing with the calendar quarter which begins on January 1, 1993, each manufacturer shall submit to the Executive Officer a quarterly report within 45 days of the end of each calendar quarter. Each quarterly report shall list the number and the model year of all air-

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Division 2. California Housing Finance Agency

(Originally Printed 12-6-75)

Chapter 1. General

Article 1. Conflict-of-Interest Code

§ 10001. General Provisions.

The Political Reform Act, Government Code sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict-of-Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations section 18730, which contains the terms of a standard Conflict-of-Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict-of-Interest Code of the California Housing Finance Agency (the Agency).

Designated employees shall file statements of economic interests with the Agency, which will make the statements available for public inspection and reproduction. (Govt. Code Section 81008). Upon receipt of the statements of Board Members and the Executive Director, the Agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the Agency.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

HISTORY

1. Repealer of chapter 1 (article 1, sections 10001-10006) and new chapter 1 (article 1, sections 10001-10011) filed 8-12-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4-20-77 (Register 77, No. 37). For prior history, see Registers 75, No. 49; and 76, No. 20.
2. Repealer of article 1 (sections 10001-10011 and Exhibits A and B) and new article 1 (section 10001 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Amendment of Appendix filed 6-14-84; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-7-84 (Register 84, No. 24).
4. Amendment of Appendix refiled 10-4-84; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-7-84 (Register 84, No. 40).
5. Amendment of section 10001 and Appendix filed 1-30-91; operative 3-1-91. Approved by Fair Political Practices Commission 12-6-90 (Register 91, No. 14).
6. Amendment of section and Appendix filed 4-18-96; operative 5-18-96. Approved by Fair Political Practices Commission 2-8-96 (Register 96, No. 16).
7. Amendment of section and Appendix filed 7-28-97; operative 8-27-97. Approved by Fair Political Practices Commission 6-4-97 (Register 97, No. 31).
8. Amendment of section and Appendix filed 2-7-2006; operative 3-9-2006. Approved by Fair Political Practices Commission 12-16-2005 (Register 2006, No. 6).
9. Amendment of article heading and section and redesignation and amendment of former Appendix as new Appendix A and Appendix B filed 3-26-2010; operative 4-25-2010. Approved by Fair Political Practices Commission 3-3-2010 (Register 2010, No. 13).

Conflict-of-Interest Code of the California Housing Finance Agency Appendices Appendix A

Assigned
Disclosure
Category

Designated Employees

Persons holding the following positions and/or the following classifications are "designated employees":

Board of Directors

Board Member (All members of the Board other than the State Treasurer) 1, 2

Executive

Executive Director 1, 2
Chief Deputy Director 1, 2
Director of Legislation 1, 2
Information Security Officer 2

Administration

Director of Administration 1, 2
Staff Services Manager (all classes and all levels) 1, 2

Information Technology

Chief Information Officer 2
Systems Software Specialist III (Supervisory) 2
Senior Programmer Analyst (Supervisor) 4
Staff Information Systems Analyst (Specialist) (Technical Support & Procurement Administration) 4

Marketing

Director of Marketing 1, 2

Legal

General Counsel 1, 2
Assistant Chief Counsel 1, 2
Staff Counsel (all classes and all levels) 1, 2

Financing

Director of Financing 1, 2
Risk Manager 1, 2
Housing Finance Chief (all classes) 1, 2
Accounting Administrator III 1, 2
Financing Officer 1, 2
Financing Specialist 1, 2

Fiscal Services

Comptroller 1, 2
Deputy Comptroller 1, 2
Accounting Administrator III 1, 2
Accounting Administrator II 3
Housing Finance Officer (all classes) 1, 2

Homeownership

Director of Homeownership 1, 2
Deputy Director 1, 2
Housing Finance Chief (all classes) 1, 2
Housing Finance Officer (all classes) 1, 2

Multifamily

Director of Multifamily Programs 1, 2
Deputy Program Director 1, 2
Housing Finance Chief (all classes) 1, 2
Supervising Design Officer 1, 2
Senior Design Officer 1, 2
Senior Housing Construction Inspector 1, 2
Housing Finance Officer (all classes) 1, 2
Chief, Special Lending Programs (CEA II) 1, 2

Asset Management

Deputy Director of Asset Management 1, 2
Housing Finance Chief (all classes) 1, 2
Housing Finance Officer (all classes) 1, 2

Mortgage Insurance Services

Director of Mortgage Insurance 1, 2
Deputy Director 1, 2
Housing Finance Chief (all classes) 1, 2
Housing Finance Officer (all classes) 1, 2
Housing Finance Specialist (all classes) 1, 2

Consultants

Consultant 1, 2

With respect to Consultants, the General Counsel of the Agency may determine in writing that a particular consultant, although a "designated employee," is hired to perform a range of duties that is limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. A copy of the written determination is a public record and shall be retained and made available for public inspection in the same manner and location as this Conflict-of-Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict-of-Interest Code.

Appendix B

Disclosure Categories

Category 1 — Interests in Real Property

Designated employees in Category 1 must report:

All interests in real property in the State of California.

Category 2 — Full Disclosure (excluding interests in real property)

Designated employees in Category 2 must report:

All investments, business positions and sources of income, including gifts, loans and travel payments, from sources that:

(A) Are any person or entity which is defined in part 1, chapter 2, of the Zenovich–Moscone–Chacon Housing and Home Finance Act (chapter 2 commences at section 50050 of the California Health and Safety Code) to be any of the following:

- (1) "housing sponsor"
- (2) "limited-dividend housing sponsor"
- (3) "qualified mortgage lender"; or,

(B) Are any person or entity that contracts or otherwise does business with the Agency, or is soliciting a contract or other business from the Agency, and which is any of the following:

- (1) financial services company
- (2) bank, including commercial bank, mortgage bank, thrift, credit union, or similar lender
- (3) investment bank
- (4) real estate services company
- (5) brokerage company
- (6) insurance company
- (7) title company
- (8) escrow company
- (9) building or construction contractor or subcontractor
- (10) sources that are the type that, within the previous two years, have contracted with the Agency to provide leased facilities, supplies, materials, machinery, equipment, or services, including training and consulting services, to the Agency, or have otherwise done business with the Agency

(11) sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the Agency, as well as entities providing computer consultant services to the Agency

(12) law firm that represents persons or entities described in Category 2A in matters directly related to their status as described in Category 2A.

(13) law firm that represents persons or entities described in Category 2B in matters directly related to their status as described in Category 2B.

Category 3 — General Procurement

Designated employees in Category 3 must report:

All investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that are of the type that, within the previous two years, have contracted with the Agency to provide leased facilities, supplies, materials, machinery, equipment, or services, including training and consulting services, to the Agency, or have otherwise done business with the Agency.

Category 4 — Information Technology

Designated employees in Category 4 must report:

All investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that manufacture, distribute, supply, or install computer hardware or software

of the type utilized by the Agency, as well as entities providing computer consultant services to the Agency.

§ 10002. Delegation; Absence.

In the absence of the Executive Director, the Chief Deputy Director, or other agency official designated in writing by the Executive Director, may act on behalf of the Agency with respect to any and all matters on which the Executive Director has authority to act.

For purposes of this section, "absence of the Executive Director" means the Executive Director is not present at the location where an action or signature on behalf of the agency is required for any reason, including, but not limited to, the temporary vacancy of the Executive Director position.

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 50908, Health and Safety Code.

HISTORY

1. New section filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

Chapter 2. Rental Housing Development Programs

Article 1. General

§ 11001. Authority and Purpose.

This chapter is adopted pursuant to Section 51050(e) of the Health and Safety Code in order to implement the provisions of Part 3 (commencing with Section 50900) of Division 31 of the Health and Safety Code other than the provisions of Chapter 6.7 of said Part 3.

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 50900, Health and Safety Code.

HISTORY

1. New Chapter 2 (Sections 11001–11406, not consecutive) filed 11–23–76; effective thirtieth day thereafter (Register 76, No. 48).
2. Amendment filed 10–23–85; effective thirtieth day thereafter (Register 85, No. 43).

§ 11002. Definitions.

(a) Any term defined in Chapter 2 (commencing with Section 50050) of Division 31, Part 1 of the Health and Safety Code shall have the same meaning when used in this chapter as is given to it by said Chapter of the Health and Safety Code unless further or otherwise defined hereafter in this section.

(b) "Act" means the Zenovich–Moscone–Chacon Housing and Home Finance Act as it now exists or may hereafter be amended.

(c) "Affordable rent" shall mean:

(1) In Section 8 assisted developments the "total tenant payment" as defined by HUD 24 C.F.R. Section 813.107.

(2) For purposes of dwelling units for occupancy by lower-income households in multifamily rental housing, the rehabilitation of which is financed by the Agency and which is not a Section 8 assisted housing development, (i) an amount not exceeding thirty percent (30%) of fifty-eight percent (58%) of the applicable county median income as set forth in Title 25, Section 6932; or (ii) when the Agency determines that the cost of rehabilitation or acquisition of the multifamily rental housing makes such rents economically infeasible, thirty percent (30%) of seventy percent (70%) of the applicable county median income as set forth in Title 25, Section 6932.

(3) For purposes of section (c)(2), the applicable county median income for zero bedroom (studio) units shall be the county median income for one person, for one bedroom units it shall be the county median income for a two-person family, for two-bedroom units it shall be the county median income for a four-person family, and for three-bedroom units it shall be the county median income for a six-person family.

(4) For purposes of section (c)(2), if tenants are required to pay for their own utilities, an allowance for utilities other than telephone shall be the same as that used by the local housing authority in which the project is located for the Section 8 existing certificate holders for determining the

utility allowance and shall be deducted from affordable rent to determine the actual rent to be charged to the tenant.

(d) "Agency" means the California Housing Finance Agency.

(e) "Board" means the Board of Directors of the California Housing Finance Agency.

(f) "C.F.R." means Code of Federal Regulations.

(g) "Code" means the Health and Safety Code.

(h) "Housing development" means "housing development" as defined by Section 50073.5 of the Code and may include such nonhousing facilities as are approved pursuant to Section 11103 of this chapter.

(i) "Housing sponsor" means any "housing sponsor" within the definition of Section 50074.5 of the Code.

(j) "HUD" means the United States Department of Housing and Urban Development or its designee.

(k) "Market rent" means that monthly rental determined by the Agency to be comparable to the rent charged for units of similar size, construction type, amenity level, and other characteristics within the market area of the housing development.

(l) "Persons and families of low or moderate income" includes any of the following:

(1) A "very low income family" is a family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

(2) A "low income family" is a family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that income limits higher or lower than 80 percent may be established on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

(3) A "moderate income family" is a family whose income does not exceed 120 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

(4) For purposes of this section, "family" includes an elderly, handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 201(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 1437a).

(m) "Rental housing development" shall not include owner-occupied housing development nor mutual self-help housing.

(n) "Section 8 assisted housing development" means a housing development, or that part of a housing development, containing units subject to an "Annual Contributions Contract" as defined by 24 C.F.R. Section 883.302.

(o) "Person" means an individual, family, corporation, proprietorship, partnership, association or any other entity.

(p) Section references are to sections of this chapter unless indicated otherwise.

NOTE: Authority cited: Sections 50462(f) and 51050, Health and Safety Code. Reference: Sections 51050, 50053, 50073.5, 50074.5, 50952(a) and 51335, Health and Safety Code; and 24 CFR Sections 813 and 883.

HISTORY

1. Amendment of subsection (c) filed as an emergency 8-12-83; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-10-83.
2. Amendment of subsection (c) filed 6-21-84; effective thirtieth day thereafter (Register 84, No. 25).
3. Amendment of subsection (c) filed 10-23-85; effective thirtieth day thereafter (Register, No. 43).
4. Amendment of subsections (a), (h), (i) and (n) and NOTE filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11003. Delegation. [Repealed]

HISTORY

1. Repealer filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

Article 2. Construction and Mortgage Loans

§ 11101. Qualification of Housing Sponsors for Rental Housing Developments to Be Constructed.

Before the agency may make or approve a commitment to any person for a construction or mortgage loan, the agency shall determine, taking into account the nature of the housing development and the person (whether a natural person or a public or private entity), that said person

- (a) Is credit worthy,
- (b) Is financially responsible,
- (c) Is (if not a natural person) duly organized and qualified to do business in this state,
- (d) Is capable of proceeding promptly to construct and complete the housing development,
- (e) Has the ability to operate the housing development,
- (f) Has a commitment to construct and operate the housing development in accordance with all applicable federal and state "Equal Opportunity," "Employment of Project Area Residents and Contractors" and "Affirmative Fair Housing Marketing" regulations.

NOTE: Authority cited: Sections 50955, 51050(c) and 51101, Health and Safety Code. Reference: Sections 50051, 50094 and 50100, Health and Safety Code.

HISTORY

1. Repealer of first paragraph and new NOTE filed 12-19-2005; operative 12-19-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 51).

§ 11102. Criteria for Rental Housing Developments to Be Constructed.

In order to obtain financing in the form of a construction or mortgage loan from the agency or from a qualified mortgage lender for a rental housing development to be constructed, a housing sponsor or other person applying to be certified as a housing sponsor pursuant to Section 11101 of this article shall submit to the agency such information as is required by the agency to enable the agency to make the determinations required by this section.

(a) Mandatory Requirements. No application for a construction or mortgage loan shall be approved unless the agency is assured:

- (i) That the proposed housing development will be economically feasible, and
- (2) That the proposed housing sponsors and prospective tenants will be eligible for financial assistance under the Act, and
- (3) That the proposed housing development is consistent with the current housing objectives of the agency, and
- (4) That the proposed housing development has or will have sufficient access to supporting social services, transportation, schools, employment and retail merchants, and
- (5) That the location of the proposed housing development is consistent with the agency's policies of dispersing housing developments throughout communities and avoiding undue concentrations of persons and families of low income except where overriding considerations of economic need necessitate modifying these requirements in order to accomplish the housing objectives of the agency in concentrated rehabilitation areas and participating mortgage funds assistance areas, and
- (6) That the proposed housing development will provide safe, sanitary and decent housing meeting the requirements of all applicable building standards, and
- (7) That the housing sponsor is prepared to meet any relocation obligations imposed by the Act.

(b) Priorities in Selection of Developments for Financing. Various sections of the Act designate housing priorities to be reflected in the agency's activities. Necessarily, the emphasis on particular priorities, as reflected in the agency's current housing objectives, will change over time due to circumstances and conditions. Within these parameters, the

(c) That the proposed housing development will provide safe, sanitary and decent housing meeting the requirements of all applicable building standards, and

(d) That the housing sponsor is prepared to meet any relocation obligations imposed by the Act.

(e) Priorities in Selection of Developments for Financing. Various sections of the Act designate housing priorities to be reflected in the agency's activities. Necessarily, the emphasis on particular priorities, as reflected in the agency's current housing objectives, will change over time due to circumstances and conditions. Within these parameters, the

agency will give priority consideration in approving loan commitments to housing developments which:

(1) Assist the agency in making full use of available federal subsidies;

(2) Are consistent with the agency's objective of providing that not less than 30% of the units for which commitments are made are for very low income households;

(3) Assist the agency in balancing its financing activities among rural, metropolitan and nonmetropolitan areas of the state in general proportion to the relative needs for housing assistance in those areas identified in the California Statewide Housing Plan adopted by the Legislature. In the absence of such an adopted plan the agency will consider data relating to such needs developed by the Department of Housing and Community Development.

(4) Reflect the housing needs of identifiable groups of persons such as but not limited to the elderly, handicapped, large households, and persons displaced from housing by governmental actions or natural disasters, as those needs are identified in an adopted California Statewide Housing Plan adopted by the Legislature. In the absence of such an adopted plan the agency will consider data relating to such needs developed by the Department of Housing and Community Development.

(5) Whether the housing development is consistent with local governmental housing needs and priorities as reflected in areawide and local housing elements, housing assistance plans, housing allocation plans, and comments from A-95 clearinghouse(s).

(c) Additional Objectives. In addition to the foregoing mandatory requirements and priorities in selecting housing developments for approval, the agency shall review the following factors in determining whether a loan commitment shall be approved.

(1) Whether the housing development is superior in terms of amenities, scale of the development, architectural treatment and aesthetic impact on the surrounding community;

(2) Whether the housing development will contribute to employment opportunities; is located in an area with low vacancy rates; whether the development will promote the recovery and growth of economically depressed businesses located in areas of minority concentration and in mortgage deficient areas;

(3) Whether the housing development will increase the range of housing choices for minorities of low income and low-income persons rather than increasing the impact of low-income areas.

§ 11102.5. Construction Standards, Access for Physically Handicapped. [Repealed]

HISTORY

1. Repealer filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11103. Nonhousing Facilities.

(a) Housing developments may include such streets, sewers, utilities, site preparation, open space, and landscaping as the agency determines are necessary or appropriate in connection with the housing development.

(b) Housing developments may include other nonhousing facilities such as administrative, community, health, recreational, educational, commercial, dining, and childcare facilities. The agency shall exercise reasonable judgment in encouraging and approving applications for financing assistance for housing developments containing such nonhousing facilities, taking into account the following factors:

(1) Whether said facilities will directly benefit the occupants of the development,

(2) Whether said facilities will be compatible with a suitable living environment for the occupants,

(3) The nature of the intended occupants of the development, whether families with children, the elderly, the handicapped, or others,

(4) The views of local organizations and groups as to the needs of occupants and whether such facilities are or will be otherwise provided within the community for occupants of the housing development.

(5) The prior availability of such facilities in the community,

(6) The economic feasibility of including such facilities,

(7) The availability of and feasibility of using other sources of financing for such facilities,

(8) The availability of federal subsidies for housing developments containing such facilities.

(c) In reviewing the factors enumerated in (b) above, for the inclusion of nonhousing facilities within any request for a construction or mortgage loan commitment the agency shall be guided by the policies of:

(1) Encouraging common areas, play areas and childcare facilities in family housing developments, and congregate dining facilities in housing projects primarily for elderly persons;

(2) Requiring all such commercial facilities financed with a below-market-interest rate, to the extent of any benefit from such rate, to contribute to the support of the residential units in the housing development, and

(3) Avoiding duplication of services or functions existing within the community in areas convenient to the housing development which are provided at reasonable cost to the occupants of housing development.

§ 11104. Terms and Conditions of Loans.

(a) Each construction and/or mortgage loan to a housing sponsor for a rental housing development shall be made on such terms and conditions as the agency shall determine are necessary or appropriate to provide sufficient security for obligations to and of the agency to ensure that the construction and mortgage loan programs of the agency are economically viable. Said terms and conditions shall include, but are not limited to, the following:

(1) That the deed of trust securing said loan shall create a first, second or more junior lien on the housing development with respect to which said loan is made and shall be executed and recorded in accordance with existing applicable laws,

(2) That the deed of trust shall provide, among other things, that the agency, upon default by the housing sponsor under the terms of the deed of trust and in the agency's discretion, either may declare all sums secured thereby immediately due and payable by executing and recording or causing to be executed and recorded a notice of default and election of sale or by commencing an appropriate foreclosure action. In addition, upon the occurrence of a default, the agency may, in person, by agent or by receiver appointed by a court enter upon and take possession of the housing development, collect all rents, and perform any acts necessary to maintain or operate it, all in such manner as to not cause the cessation of any federal subsidies.

(3) That the amount of said loan shall be within all limitations prescribed by law,

(4) That the scheduled loan repayments, including fees and charges together with interest accumulated on disbursement funds shall be estimated to be sufficient in amount and time to enable the agency to meet its administrative expenses and debt service on any notes or bonds issued or to be issued in connection with said loan,

(5) That the housing sponsor shall have or acquire title to the site of the housing development free and clear of all liens or encumbrances which would materially affect the value of said site as a site for the housing development or a leasehold interest in the site of duration and terms found acceptable by the General Counsel,

(6) That the housing development shall have been approved by the agency pursuant to Section 11102 of this article,

(7) That any contract for the construction of the housing development shall be approved by the agency pursuant to Article 4 of this chapter, and

(8) That disbursements of loan proceeds from the agency to the housing sponsor for progress payments for construction work shall be pursuant to procedures as provided in Section 11106.

(b) The agency may make mortgage loans, for the purpose of creating or preserving rental housing developments in accordance with the Act. "Refinancing" as used herein shall mean providing new financing for a rental housing development for which the original construction was completed more than one (1) year prior thereto. "Completed" as used herein shall mean that certificates of occupancy shall have been issued for at least ninety percent (90%) of the units.

(c) The development cost limitation of Section 50958 of the Code shall mean that the agency's mortgage loan amount, when combined with the amounts owed on any senior encumbrances, shall not exceed 95% (in the case of a housing sponsor other than a local public entity or nonprofit) or 100% (in the case of a local public entity or nonprofit), as applicable, of the development costs.

(d) In the case of a refinancing mortgage loan, the term "development costs" as defined in Section 50065 of the Code shall mean the fair market value of the housing development as substantiated by an appraisal acceptable to the agency.

(e) For the purposes of Section 51104(b) of the Code, "... guaranteed ... by an agency of the state ..." and, for the purposes of Section 51104(d) of the Code, "... guaranteed in whole or in part by an agency of the state, including the California Housing Finance Agency, a political subdivision of the state, ..." shall include but not be limited to arrangements whereby the agency secures the bonds by pledging its interests in mortgages pledged by the Federal National Mortgage Association upon conditions satisfactory to the agency.

NOTE: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 50065, 50086, 50958, 51104(b) and (d), Health and Safety Code.

HISTORY

1. Redesignation of subsection (a), subsection renumbering, amendment of subsection (a)(1), and new subsections (b)-(e) and NOTE filed 3-9-95; operative 4-10-95 (Register 95, No. 10).

§ 11105. Interest Rate Limitations.

The yield to the agency with respect to any construction or mortgage loan on a rental housing development, which loan is made by the agency or by a qualified mortgage lender (taking into consideration any fees and charges imposed by the agency) shall be such that any bonds or notes issued by the agency shall be not "arbitrage bonds" within the meaning of Section 103(d)(2) of Title 26 of the United States Code.

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 103, Title 26, United States Code.

HISTORY

1. Amendment of section and new NOTE filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11106. Construction Progress Payment Disbursements. [Repealed]

HISTORY

1. Repealer filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11107. Earnings Distribution.

Earnings distribution to a housing sponsor (other than a nonprofit housing sponsor or local entity) shall be limited to an annual amount no greater than 6% of the housing sponsor's equity invested in the housing development in the case of housing developments intended primarily for elderly persons, or an amount not to exceed 10% of the housing sponsor's equity invested in the housing development in the case of housing developments intended primarily for nonelderly persons, except as such distributions may be increased pursuant to the provisions of paragraph 2 of Section 51202 of the Health and Safety Code.

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 51202, Health and Safety Code.

HISTORY

1. New section filed 10-29-80; effective thirtieth day thereafter (Register 80, No. 44).

Article 3. Equal Opportunity

§ 11201. Equal Employment and Business Opportunity; Equal Housing Opportunity.

Every contract let for the management, construction, or rehabilitation, or let in the performance of the management, construction or rehabilitation of any CHFA financed housing development shall comply with all required state and federal equal opportunity laws, regulations and orders.

Any housing development assisted by any program of the agency shall be open for occupancy by all, regardless of race, sex, sexual orientation, marital status, familial status, color, religion, national origin, ancestry, or handicap, in accordance with all applicable state and federal laws.

HISTORY

1. Amendment of article 3 heading, repealer of former section 11201 and renumbering and amendment of former section 11204 to new section 11201 filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11202. Affirmative Marketing Programs.

It shall be the policy of the agency to achieve greater access to housing opportunities created by programs assisted by the agency for all persons regardless of race, sex, sexual orientation, marital status, familial status, color, religion, national origin or handicap. An Affirmative Fair Housing Marketing Plan (the "Plan") furthering this policy shall be submitted to the agency by any housing sponsor who seeks financial assistance from the agency. The Plan shall satisfy all requirements of the Affirmative Fair Housing Marketing Regulations in 24 C.F.R. Section 200.600 et seq., and shall remain in force and effect until the deed of trust securing any agency financing is terminated.

In addition, the Plan shall satisfy the following requirements:

(a) It shall contain an undertaking by the housing sponsor to rent the units in the development in a manner consistent with giving notice of the availability of such units to all persons in the housing market of the community irrespective of race, sex, marital status, color, religion, national origin or handicap.

(b) All advertising should state "Financed by the California Housing Finance Agency" and "Equal Housing Opportunity," with the appropriate HUD logo.

(c) It shall identify by language and by number any significant number of persons in a community within the housing market area who have a limited fluency in the English language.

(d) Where there is a significant number of persons in a community within the housing market area who have a limited fluency in the English language, the Plan shall:

(1) Identify the media most likely to reach such persons,

(2) Provide that in advertisements for the housing development the publication will be made in the native language of such persons, in addition to advertisements in the English language, and

(3) Describe the provisions which the housing sponsor will make for handling inquiries by and negotiations with such persons for the rental of units in the development.

(e) The housing sponsor shall keep a record of all advertisements made pursuant to the Plan. The records shall include a copy or transcript of the advertisement copy, the identity of the media in which it was disseminated, and the date(s) of each appearance. The housing sponsor shall also keep a record of the dates and places of any meetings or communications between the housing sponsor and any individual or group referred to the housing sponsor by the agency or organizations, representing any of the groups within the community acting on behalf of any classification of persons described in (a) above. Such records shall be retained for a period of two years.

The agency may from time to time review the Plan and the housing sponsors' activities pursuant to the Plan and may require amendments to the Plan if it does not fully comply with the requirements of this section.

Nothing in this section shall be construed to require the housing sponsor to make units available to the handicapped in excess of the number of such units required under the regulatory agreement (or other contractual documents) between the housing sponsor and the agency. This section shall not apply to an "owner-occupied housing development" or to "mutual self-help housing" except to the extent required by any applicable Federal law(s).

HISTORY

1. Repealer of former section 11202 and renumbering and amendment of former section 11205 to new section 11202 filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11203. Employment of Project Area Residents and Contractors—Section 3 Covered Projects. [Repealed]

HISTORY

1. Repealer filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

§ 11204. Equal Housing Opportunity. [Repealed]

HISTORY

1. Renumbering of former section 11204 to new section 11201 filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

§ 11205. Affirmative Marketing Programs. [Repealed]

HISTORY

1. Renumbering of former section 11205 to new section 11202 filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

§ 11206. Adaptation of Language. [Repealed]

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 50955, Health and Safety Code.

HISTORY

1. Repealer filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

Article 4. Tenancy Standards and Procedures

§ 11401. Selection of Tenants.

Each housing sponsor receiving a construction or mortgage loan commitment shall develop a Resident Selection Plan. The plan shall be submitted to and approved by the agency prior to the loan closing.

The plan shall:

(a) Establish income limits for the rental of each unit within the housing development.

(b) Provide for a tenant counseling program for tenants unless this requirement is waived in writing by the agency.

(c) Detail the manner in which the housing sponsor will give preference in the renting of units to tenants:

(1) Displaced from housing by this or another housing development;

(2) Displaced from housing by governmental actions or natural disasters;

(3) Who are elderly;

(4) Who are handicapped;

(5) Who are persons or families of low, very low and moderate income; and

(6) Who are tenants constituting large families.

(d) Within the classifications set forth in (c) above, provide, unless this requirement is waived in writing by the agency, that not less than twenty percent (20%) of the units in the housing development shall be rented to persons of very low income.

(e) Shall provide that the housing sponsor will notify each person making an application to rent a unit within the housing development within ten (10) days from the date of such application, in writing of:

(1) Whether the tenant is eligible to rent such unit;

(2) Whether, based upon turnover history, if any, a unit for which the tenant is eligible will be available within six (6) months; and

(3) If the tenant is not eligible, a statement of the reasons for such lack of eligibility.

(4) The applicant's right to be placed on a waiting list for vacancies occurring in the housing development, and notified by the housing sponsor of vacancies for which the applicant is an eligible tenant, subject to the rental priorities for the housing development approved by the agency.

(f) Require that a list of all applicants for tenancy within the housing development be kept for a period of one year from the date the application is filed with the housing sponsor.

(g) Explicitly provide that the housing sponsor shall not utilize status criteria (e.g., source of income, sexual preferences, marital status, dress and grooming standards) in determining tenant eligibility under the plan.

HISTORY

1. Repealer of former article 4 (sections 11301–11303) and renumbering of former article 5 to new article 4 filed 11–12–96; operative 12–12–96 (Register 96, No. 46). For prior history of article 4, see Register 90, No. 14.

§ 11402. Leases.

The Agency shall provide a lease, consistent with all applicable federal and state laws, regulations, and orders, to housing sponsors for those units regulated under this chapter.

All leases subject to this chapter shall:

(a) Contain an explicit statement of the tenant's rights under Section 1942 of the Civil Code.

(b) Provide that at least thirty (30) days before filing an application with the agency for an increase in the maximum permissible rent or utility service charges to be paid by tenants, the housing sponsor shall notify the tenants of the proposed rent and/or utility increases.

(c) Copies of such notice shall be delivered directly or by mail to each tenant. The notice shall:

(1) State the proposed date of which the application for increases is to be filed with the agency;

(2) Set forth the reasons for requesting the increases, the amount of the increases for each type of unit in the housing development, and provide that any tenant or representative of the tenant may inspect any documents the housing sponsor intends to forward to the agency in connection with its application at a designated place within the housing development during regular business hours of the housing sponsor;

(3) Provide that the housing sponsor shall meet at a designated place within the housing development with all interested tenants and their representatives at least ten (10) but not more than fifteen (15) days prior to submitting the application for such increases to the agency and shall further state that written comments on the proposed increases may be submitted to the agency by the tenants at: (insert address of applicable agency office).

(d) Provide that the housing sponsor will give at least seventy-two (72) hours written notice of any proposed annual inspection of the tenant's unit by the agency.

NOTE: Authority cited: Section 51050, Health and Safety Code.

HISTORY

1. Amendment of section and new NOTE filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

§ 11403. Tenant Grievance Procedures.

Each housing sponsor of a rental housing development shall submit, together with its affirmative marketing program, proposed grievance procedures for resolving complaints by the housing sponsor concerning the housing sponsor's tenants and by its tenants concerning the housing sponsor or the housing sponsor's other tenants. The proposed procedures shall be reviewed by and subject to the approval of agency, which shall require such modifications in the procedures prior to approval as may be necessary or appropriate in the circumstances. The procedures shall contain such informal and/or formal mechanisms for dispute resolution as are appropriate given the nature of the housing sponsor, the size and nature of the housing development, and the characteristics of the tenants (including the extent of English language fluency).

A written copy of the procedures as approved shall be given to each tenant at the time of admission to the housing development and at such times as the procedures are changed or amended thereafter.

Neither utilization of nor participation in such dispute resolution procedures shall constitute a waiver of, or affect in any manner whatever, any rights the tenant or the housing sponsor may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter. The procedures specified in this section shall be in addition to the eviction hearings procedure required by Section 11406.

Where appropriate the grievance procedures shall provide that any unresolved disputes shall be referred to the agency for its recommendation of a proposed resolution of the dispute.

§ 11404. Housing Sponsor Grievance Procedure.

Any grievance (other than one involving tenants) including any contractual dispute, of a housing sponsor concerning another housing sponsor or the Agency shall be presented either orally or in writing, to the Chief Deputy Director so that the grievance may be discussed informally and settled without a formal hearing. Neither utilization of nor participation in this grievance resolution procedure shall constitute a waiver of, or affect in any manner whatever, any rights that any housing sponsor or the agency may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 51066, Health and Safety Code.

HISTORY

1. Amendment of section and new NOTE filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

§ 11405. Termination of Tenancies Other Than by Eviction.

A tenancy may be terminated without the termination being deemed an eviction under the following circumstances:

- (a) Death of the sole tenant of a unit.
- (b) By the tenant at the expiration of the term of the tenancy.
- (c) By abandonment of the premises by the tenant providing the housing sponsor complies with the provisions of Section 1951.3 of the Civil Code to establish such abandonment.
- (d) By the housing sponsor where the tenant has furnished uncontradicted information to the housing sponsor which fails to establish the tenant's financial eligibility to remain in the tenant's unit, providing the housing sponsor gives the tenant written notice of such termination pursuant to Section 1946 of the Civil Code.

Any termination of a tenancy other than for the reasons set forth in this section shall constitute an "eviction" and shall be effected only pursuant to the provisions of Section 11406.

§ 11406. Eviction Hearing Procedure.

(a) Notice to Tenant. Termination of the lease other than pursuant to the provisions of Section 11405 shall constitute an "eviction" for purposes of this section. Eviction proceedings shall be commenced by the giving of notice as required by Section 51066(b) of the Act. In the case of an eviction upon the ground of "other good cause" as permitted by subsection g(3) of this section, the notice shall be given pursuant to Section 1946 of the Civil Code and shall otherwise comply with the requirements of 24 C.F.R. Section 883.708(c)(2).

(b) Notice to Agency. As soon as practicable after the receipt by the housing sponsor of a request for a hearing pursuant to Section 51066(c) of the Act ("Hearing"), the housing sponsor or the tenant shall give notice to the agency of a request for a Hearing. However, the housing sponsor shall remain ultimately responsible for notifying the agency of a request for a Hearing. Said notice shall include a statement of the cause for eviction.

(c) Presiding Officers. The Hearing shall take place before a hearing officer who shall be an impartial, disinterested person, or, at the discretion of the agency, a hearing panel. Said hearing officer or hearing panel shall be selected by the agency. A party may, within twenty-four (24) hours of receiving the initial written notification from the agency identifying the hearing officer or hearing panel, request that a new hearing officer or hearing panel be assigned. The other party may, within twenty-four (24) hours of receiving the written notification from the agency identifying the reassigned hearing officer or hearing panel, request that a new hearing officer or hearing panel be assigned. Each party may request the assignment of a new hearing officer or hearing panel only once during the hearing process.

(d) Escrow Deposit. The tenant shall deposit in an escrow account maintained by the agency rent for the two week Hearing period if not already paid by such time. The escrow deposit must be received by the agency no later than twenty-four (24) hours prior to the commencement of the hearing as indicated in the written notice prepared by the agency.

Failure to provide the escrow deposit in accordance with this paragraph shall result in a waiver of the tenant's right to the Hearing.

(e) Scheduling of Hearing. The agency shall schedule a Hearing promptly for a time and place reasonably convenient to both the housing sponsor and the tenant but not more than two weeks from the date the notice of request for a Hearing was received by the agency. A written notification specifying the time, place, and the procedures governing the Hearing shall be delivered to the housing sponsor and the tenant.

(f) Procedures Governing the Hearing.

(1) The housing sponsor and the tenant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

(A) The opportunity by the tenant to examine prior to the Hearing and, at the expense of the tenant, to copy, all documents and records of the housing sponsor that are relevant to the hearing and not privileged (any document not so made available after request therefore by the tenant may not be used or relied on by the housing sponsor at the Hearing).

(B) The right to representation, so long as an appearance by the representative does not delay the scheduling of the Hearing beyond the two week period specified in subsection (e).

(C) A private Hearing, unless both the tenant and housing sponsor request a public Hearing.

(D) The right to present evidence and arguments in support of his or her position, to controvert evidence relied on by the opposing party, and to confront and cross-examine all witnesses testifying at the Hearing, and

(E) A decision based solely and exclusively upon the facts presented at the Hearing that "good cause," as defined by subsection (g) of this section, for eviction has or has not been shown by a preponderance of the evidence.

(2) At the Hearing, the housing sponsor must first make a showing of "good cause" for eviction and must thereafter sustain the burden of proof as to that issue.

(3) The Hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence relevant to the "good cause" issue may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the housing sponsor, the tenant, representatives of the housing sponsor or tenant, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings. Either the housing sponsor or the tenant may arrange, in advance and at the expense of the party making this arrangement, to make a transcript of the Hearing.

(4) If the housing sponsor or the tenant fails to appear at a scheduled Hearing (either personally or by representative), or notifies the Agency of an intent not to be present at the scheduled Hearing, the hearing officer or hearing panel may make a determination to postpone the Hearing for a period not to exceed five business days or may make a determination that the party has waived his or her right to a Hearing. Both the housing sponsor and the tenant shall be notified of any such determination by the hearing officer or the hearing panel, such notification to include the date, time, and place of the rescheduled Hearing, if any.

(5) The hearing officer or hearing panel shall prepare a written decision, together with the reason therefor, within a reasonable time after the Hearing but, unless said Hearing was a rescheduled Hearing pursuant to subsection (f)(4) of this section, not later than two weeks after the date of receipt by the agency of the request for Hearing. A copy of the decision shall be sent to the housing sponsor, the tenant and the agency.

Neither utilization of nor participation in the Hearing process of this section shall constitute a waiver of, or affect in any manner whatever, any rights that the tenant or housing sponsor may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

(g) Definition of "Good Cause."

The housing sponsor may evict a tenant only upon the following grounds:

- (1) Material noncompliance with the lease, which includes:
- (A) one or more substantial violations of the lease, or
 - (B) habitual minor violations of the lease which:
 1. Disrupt the livability of a building,
 2. Adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities,
 3. Interfere with the management of the building, or
 4. Have an adverse financial effect on the building. Rent shall be due on the first day of the rental period but will not be late until after the fifth day of that period. Unjustified non-payment of rent after the fifth day of the rental period but before either the running of a three-day notice to pay rent or quit or the close of business of the day after the day on which a Hearing decision is issued shall constitute a minor violation under the lease, but non-payment of rent or any other financial obligation under the lease after either such period shall constitute material noncompliance with the lease.

(2) Material failure to carry out obligations under state law, or

(3) Any other good cause, which may include the refusal of a family to accept an approved modified lease, for which a notice has been given as required by 24 C.F.R. Section 880.607(b)(2) or (d).

NOTE: Authority cited: Section 51050, Health and Safety Code. Reference: Section 51066, Health and Safety Code; and 24 C.F.R. Section 880.

HISTORY

1. Amendment of subsections (a), (b) and (g) filed 10-23-85; effective thirtieth day thereafter (Register 85, No. 43).
2. Editorial correction of subsection (g) filed 12-2-85; effective thirtieth day thereafter (Register 85, No. 49).
3. Amendment of section and NOTE filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

Article 6. Construction Loans Where Agency Does Not Provide Permanent Financing [Repealed]

HISTORY

1. Repealer of article 6, sections 11500-11505 filed 11-12-96; operative 12-12-96 (Register 96, No. 46).

Chapter 3. Restrictions on Agency Public Benefits to Aliens

Article 1. General

§ 12001. Authority and Purpose.

This chapter is adopted pursuant to Section 51050(e) of the California Health & Safety Code in order to implement the provisions of federal legislation known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. No. 104-193, 8 U.S.C. § 1601, et seq.), which provides that only citizens or other nationals of the United States or qualified aliens may receive agency public benefits. The purpose of this chapter is to implement those requirements by establishing rules and procedures for verifying the eligibility of applicants for agency public benefits.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050-51070, 51100-51253 and 51325-51340, Health and Safety Code.

HISTORY

1. New chapter 3 (articles 1-2), article 1 (sections 12001-12005) and section filed 6-9-98 as an emergency; operative 8-1-98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-30-98 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 84, No. 8.
2. Certificate of Compliance as to 6-9-98 order transmitted to OAL 9-21-98 and filed 10-28-98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

§ 12002. Definitions.

(a) Any term defined in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the California Health & Safety Code shall have the same meaning when used in this chapter as is given to it by said chapter of the California Health & Safety Code unless further or otherwise defined in this section.

(b) "Adult" means an individual who is 18 years of age or older or an emancipated minor (under 18 years of age).

(c) "Agency" means the California Housing Finance Agency.

(d) "Agency public benefit" means either of the following (excluding any benefit provided from the California Housing Loan Insurance Fund):

- (1) any multifamily program unit, or
- (2) any single family program loan.

(e) "Alien" means any person who is not a citizen or other national of the United States.

(f) "Applicant" means any of the following:

(1) In the case of a new tenancy for a multifamily program unit, each adult member of the household that intends to occupy the unit, or

(2) In the case of an existing tenancy for a multifamily program unit, either the head of the household that intends to continue to occupy the unit, or his or her spouse, provided however that if the household includes any other adult members other than the applicant's spouse, lineal ascendants (including but not limited to parents and grandparents) of the applicant or of his or her spouse, then such person shall also be subject to verification as an applicant, or

(3) In the case of a single family program loan, each person whose name will appear on the legal title to the residential structure which secures the loan.

(g) "Citizen" means a "citizen of the United States" as defined in the INA.

(h) "Existing tenancy" means either of the following:

(1) a tenancy which occupied a multifamily program unit before the effective date of this chapter and continues to occupy it thereafter, or

(2) a tenancy which occupied a multifamily program unit before the agency financed the applicable housing development or residential structure and continues to occupy it thereafter.

(i) "Final verification" or "finally verified" means a determination that an applicant is eligible pursuant to this chapter upon completion of the steps, as applicable, set forth in subparagraphs (a), (b), (c) and (d) of Section 12104 of this chapter.

(j) "Head of household" means the adult member of the household who is the head of the household for the purposes of determining income eligibility.

(k) "Housing development" means as defined by Section 50073.5 of the California Health & Safety Code. Housing development shall also include multifamily rental housing projects financed pursuant to Chapter 6.7 of Part 3 of Division 31 of the California Health & Safety Code.

(l) "Housing sponsor" means as defined by Section 50074.5 of the California Health & Safety Code. Housing sponsor shall also include the agency in any case where the agency owns or operates a housing development or residential structure.

(m) "INA" means the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.).

(n) "INS" means the Immigration and Naturalization Service of the United States Department of Justice.

(o) "Member of spouse's or parent's family" means any person related by blood, marriage or adoption to the spouse or parent, or any person having a relationship with the spouse or parent that is covered by civil or criminal domestic violence statutes of the State of California.

(p) "Multifamily program unit" means any rental dwelling unit which is located in a housing development or residential structure and required by the agency, pursuant to a law or regulatory or other agreement, to be occupied by a lower income household or very low income household.

(q) "National" means, as provided in the INA, either of the following:

- (1) a citizen, or

(2) a person who, though not a citizen, owes permanent allegiance to the United States.

(r) "New loan" means a single family program loan for which a loan application package is received by the agency for approval after the effective date of this chapter.

(s) "New tenancy" means either of the following:

(1) a household that intends to commence occupancy of a multifamily program unit, or

(2) a household that intends to join another household which already occupies a multifamily program unit.

(t) "Nonimmigrant" means as defined in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(u) "Nonprofit charitable organization" means a "nonprofit charitable organization" as provided in Section 432 of PRWORA, as amended by Pub.L. No. 104-208 (8 U.S.C. § 1642(d)) which shall include, but not necessarily be limited to, organizations which have received a tax exemption pursuant to Internal Revenue Code Section 501(c)(3) and which shall exclude, but which exclusion shall not necessarily be limited to, partnerships which have a nonprofit charitable organization as a general partner unless the partnership itself is both nonprofit and charitable. An organization is "nonprofit" if it is organized and operated for purposes other than making gains or profits for the organization or its members or shareholders and is precluded from distributing any gains or profits to its members or shareholders. An organization is "charitable" if it is organized and operated for charitable purposes, including, but not limited to, relief of the poor and distressed or of the underprivileged, advancement of religion, or advancement of education.

(v) "Preliminary verification" or "preliminarily verified" means that a citizen or other national of the United States applicant has completed the steps set forth in subparagraph (a)(1) and (2) of Section 12104 of this chapter and that an alien applicant has completed the steps set forth in subparagraphs (a)(1), (2) and (3) of Section 12104 of this chapter.

(w) "PRWORA" means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. No. 104-193, 8 U.S.C. § 1601, et seq.) as amended.

(x) "Qualified alien" means an alien who, at the time he or she is an applicant for an agency public benefit, is any of the following:

(1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101, et seq.).

(2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).

(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).

(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)).

(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect prior to April 1, 1997), or whose removal is being withheld under Section 241(b)(3) of the INA (8 U.S.C. § 1231(b)(3)).

(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.").

(7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).

(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C) and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subparagraph, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psycho-

logical or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the agency. For purposes of this subparagraph, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.

5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to place medical coverage or health care services the alien had when living with the abuser.

(C) The alien has been approved or has a petition pending which sets forth a prima facie case for:

1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii) or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv)).

2. classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)).

3. suspension of deportation and adjustment of status pursuant to Section 244(a)(3) of the INA (8 U.S.C. Section 1254) as in effect prior to April 1, 1997 [Pub.L. 104-208, Section 501 (effective September 30, 1996, pursuant to Section 591); Pub.L. 104-208, Section 304 (effective April 1, 1997, pursuant to Section 309); Pub.L. 105-33, Section 5581 (effective pursuant to Section 5582)] (incorrectly codified as "cancellation of removal under section 240A of such Act [8 U.S.C. Section 1220b] (as in effect prior to April 1, 1997)).

4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(i)), or classification pursuant to clause (i) of Section 204(a)(1)(B)(i) (8 U.S.C. § 1154(a)(1)(B)(i)), or

5. cancellation of removal pursuant to Section 240A (b)(2) of the INA (8 U.S.C. § 1229b (b)(2)).

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without

the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subparagraph, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the agency. For the purposes of this subparagraph, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.

5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subparagraph (x)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:

(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subparagraph the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the agency.

For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.

5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.

(C) The alien child meets the requirements of subparagraph (x)(8)(C) above.

(11) A nonimmigrant.

(y) "Qualified mortgage lender" means a mortgage lender who, pursuant to a mortgage purchase and/or servicing or other agreement with the agency, is authorized by the agency to originate for sale to the agency and/or to service single family program loans. Qualified mortgage lender shall also include the agency in any case where the agency is directly originating or servicing, as applicable, single family program loans.

(z) "Residential structure" means as defined by Section 50099.5 of the California Health & Safety Code.

(aa) "Status verifier" means the entity, including the agency or qualified mortgage lender, as applicable, responsible for verifying the eligibility of an applicant pursuant to this chapter.

(bb) "Single family program loan" means any mortgage loan originated or purchased, and owned, by the agency for the purpose of financing the construction, acquisition and/or rehabilitation of an owner-occupied residential structure.

(cc) "Unqualified alien" means an alien who is not a qualified alien.

(dd) "Written notice" means a written notification which is either hand-delivered, facsimile-transmitted or sent by certified mail. Hand-delivered notices shall be deemed received when delivered. Facsimile-transmitted notices shall be deemed received when transmitted. Certified mail notices shall be deemed received on the third calendar day following the date it is mailed.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050-51070, 51100-51253 and 51325-51340, Health and Safety Code.

HISTORY

1. New section filed 6-9-98 as an emergency; operative 8-1-98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-30-98 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).
4. Amendment of subsection (y), redesignation and amendment of former subsection (bb) to new subsection (aa), and redesignation of former subsection (aa) as new subsection (bb) filed 2–4–99 as an emergency; operative 2–4–99 (Register 99, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–4–99 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to 2–4–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 2000, No. 5).

§ 12003. Limitation.

The purpose of this chapter is limited to establishing rules and procedures for verifying the eligibility of applicants for agency public benefits on the basis of United States citizenship, nationality or qualified alien status. In addition to the eligibility requirements set forth in this chapter, an applicant must also satisfy all other eligibility requirements pertaining to an agency public benefit.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).

§ 12004. Severability.

If any provision of this chapter or the application of such provision to any person or circumstance is held to be unlawful, the remainder of this chapter and the application of the provisions of such to any person or circumstance shall not be affected thereby.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).

§ 12005. Nondiscrimination.

All eligibility requirements contained in this chapter shall be applied without regard to the race, creed, color, gender, religion, national origin (except to the extent specifically authorized under PRWORA), or disability of the applicant.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).

Article 2. Eligibility for Benefits

§ 12101. Eligibility for Agency Public Benefits.

To be eligible to receive an agency public benefit, an applicant must be a citizen or other national or qualified alien, as provided herein. In the case of a multifamily program unit, if, and so long as, any applicant in a

household is ineligible then the entire household is ineligible. It is an applicant's responsibility to affirmatively establish his or her eligibility.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New article 2 (sections 12101–12108) and section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).

§ 12102. When Must Eligibility Be Verified.

(a) In the case of a new tenancy, a multifamily program unit shall not be occupied unless and until the eligibility of all applicants for that unit has been preliminarily verified in accordance with this chapter. Following occupancy the remainder of the applicant's final verification process shall be continued on or before the next scheduled annual eligibility recertification, or, if none is scheduled, within one hundred eighty (180) calendar days of occupancy.

(b) In the case of an existing tenancy, the final verification process shall be commenced on or before the next scheduled annual eligibility recertification of that unit, or if none is scheduled, within one hundred eighty (180) calendar days of the effective date of this chapter. Notwithstanding the foregoing, when a tenancy occupies a non-multifamily program unit within a housing development or residential structure and that unit is substituted by the housing sponsor for a multifamily program unit within such housing development or residential structure, the tenancy shall be treated as an existing tenancy except that the eligibility of all applicants shall be finally verified before it shall be deemed to be qualified as a multifamily program unit.

(c) In the case of a new loan, a single family program loan shall not be made unless and until the eligibility of all applicants has been finally verified in accordance with this chapter. Notwithstanding any other provision of this chapter, in the event that an applicant's new loan verification process is not completed within fifteen (15) calendar days following the commencement of such process, neither the agency nor the qualified mortgage lender shall be required to continue to process or make the loan if either determines, in its sole discretion, that further delay will cause the loan to be uneconomical or otherwise not feasible. In the event that such a determination is made, and notwithstanding any other provision of this chapter, the verification process shall be terminated without further processing or appeal. If such a determination is made, the applicant(s) shall immediately be given a written notice of it.

(d) In the case of any single family program loan, the eligibility of any applicant who wishes to acquire, or be added to the title to, the residential structure shall be finally verified before the agency grants any necessary approval of such acquisition or addition to title.

(e) Except as provided in subparagraph (a) and (c) of this section, once a final verification process is commenced, it shall be diligently pursued to completion.

(f) Generally an applicant's eligibility need only be finally verified once during the life of the loan provided however that in any case where there is reasonable cause to believe that an applicant's eligibility status has been misrepresented, the applicant's eligibility may be reverified.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).

3. New subsections (a) and (b), subsection relettering, amendment of newly designated subsections (c), (e) and (f) and NOTE filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

§ 12103. Who Must Verify Eligibility.

(a) When a new loan is being made, eligibility shall be verified by the qualified mortgage lender who originates the loan. When an applicant is acquiring, or being added to the title to, the residential structure of a single family program loan, eligibility shall be verified by the qualified mortgage lender who is servicing the loan.

(b) In the case of a multifamily program unit, eligibility shall be verified by the housing sponsor which owns the housing development or residential structure.

(c) Pursuant to Section 432(d) of PRWORA (8 U.S.C. § 1642(d)) and notwithstanding any other provision of this chapter, a nonprofit charitable organization that provides agency public benefits is not required to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits nor is any such applicant required to be eligible. A nonprofit charitable organization shall be deemed to be providing an agency public benefit only when it is the qualified mortgage lender for a single family program loan or housing sponsor which owns a multifamily program unit, as applicable.

(d) In the case of a multifamily program unit, the reasonable cost of performing eligibility verifications shall be treated as an operating expense of the housing development or residential structure and the housing sponsor may charge a new tenancy applicant (but not an existing tenancy applicant) a reasonable eligibility verification fee only if approved in writing by the agency. In the case of a single family program loan, the qualified mortgage lender may charge an applicant a reasonable eligibility verification fee only if approved in writing by the agency.

(e) Notwithstanding the provisions of subparagraph (a) and (b) of this section, in the event that an applicant claims qualified alien status on the basis of facts and circumstances as set forth in subparagraphs (x)(8), (x)(9) or (x)(10) of Section 12002 of this chapter (involving a person who was battered or subjected to extreme cruelty in the United States), then the agency shall determine such eligibility as further provided in subparagraph (a)(3) of Section 12104 of this chapter.

(f) The status verifier shall keep a record of the information upon which an applicant's eligibility verification or ineligibility determination is based and shall retain such records for at least four (4) years following the completion of the verification process, except that when a single family program loan is made, the qualified mortgage lender shall keep such information for the life of the loan.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050-51070, 51100-51253 and 51325-51340, Health and Safety Code.

HISTORY

1. New section filed 6-9-98 as an emergency; operative 8-1-98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-30-98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-9-98 order transmitted to OAL 9-21-98 and filed 10-28-98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

§ 12104. Method of Verifying Eligibility.

(a) To obtain a final verification of eligibility for agency public benefits, the following requirements must be met:

(1) The applicant must declare under penalty of perjury, that he or she is either a citizen or other national of the United States or a qualified alien, by completing and signing the "Statement of Citizenship, Alienage and Immigration Status for State Public Benefits" form, CHFA Benefit Status Form 1, 9/98 ("Form 1") which is incorporated herein by this reference. If the applicant is an unemancipated minor (under 18 years of age) or an adult who is not competent to or has a disability which renders him/her unable to understand or execute the Form 1, the Form 1 must be executed by a parent, legal guardian, or other person legally qualified to act on behalf of the applicant; and

(2) The applicant must present documentation which contains a photograph or other information which describes the applicant (i.e. height, weight and age) that is sufficient to identify the applicant as the person named in the signed Form 1. In the event that the applicant fails to produce proper identification, the agency public benefit shall be denied without further verification; and

(3) The applicant must present documents, of a type acceptable to the INS (as set forth in List A of Form 1 in the case of an applicant who is a citizen or other national or as set forth in Section B or List B of Form 1, as applicable, in the case of an applicant who is an alien), in support of the applicant's declared status. An alien applicant must present unexpired originals of the most recently issued evidence of alien registration. In the event that an applicant claims qualified alien status pursuant to facts and circumstances as set forth in subparagraphs (x)(8), (x)(9) and (x)(10) of Section 12002 of this chapter (involving a person who was battered or subjected to extreme cruelty in the United States), then the Form 1 and copies of any identity and supporting documents shall be forwarded to the agency for verification. If an alien applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain appropriate documentation and the agency public benefit shall be denied unless and until such documentation is presented. A fee receipt from the INS for replacement of a lost, stolen or unreadable INS document is not an acceptable substitute for the document it replaces, however, it shall suffice for the purposes of a preliminary verification. If the applicant presents documents which clearly show that the applicant is not a citizen or other national or qualified alien and the applicant does not dispute the status shown, then the agency public benefit shall be denied without further verification.

(4) Where the documents presented pursuant to subparagraph (a)(3) of this section do not on their face appear to be genuine or otherwise to be reasonable evidence of the applicant's declared status, the status verifier shall take appropriate steps to verify the declared status of the applicant. Ordinarily, the government or other entity that originally issued the documents shall be contacted for verification by the status verifier. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS shall be contacted for verification. The status verifier shall request verification from the INS by sending INS Form G-845 (or any successor form designated by the INS) with copies of the pertinent documents provided by the applicant to the appropriate INS office as directed by the INS. Notwithstanding the foregoing, in the event that the INS will only accept INS Form G-845 filings from the agency, the status verifier shall forward the completed form to the agency who shall then send it to the INS. In the event that the INS then returns their response to the G-845 to the agency, the agency shall forward it to the status verifier.

(5) The type of documentation referred to the INS for verification pursuant to INS Form G-845 shall include, but not necessarily be limited to, the following:

(A) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(B) The document is suspected to be counterfeit or to have been altered.

(C) The document includes an alien registration number in the A60 000 (not yet issued) or A80 000 (illegal border crossing) series.

(D) The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the agency public benefit.

(6) If the INS advises that the applicant is a citizen, other national or a qualified alien, the INS verification shall be accepted and the applicant determined to be eligible. If the INS advises that it cannot verify that the

applicant is a citizen, other national or a qualified alien, the agency public benefit shall be denied unless citizenship or other national status can be verified from another source.

(b) Notwithstanding any other provisions of this chapter, where an applicant has been verified by another federal, state or local entity as eligible to receive some other federal, state or local public benefit as provided by PRWORA, such verification may be accepted by the status verifier as a verification which satisfies this chapter so long as the status verifier has a reasonable belief that such verification process ensures the eligibility of the applicant as required by this chapter.

(c) If determined to be ineligible, the applicant shall be given a written notice of such determination which includes the following information:

(1) Provides the basis of the denial (i.e. his/her immigration status), and

(2) Provides information on how the applicant may contact the INS to provide additional oral or written information to the INS if he/she believes that any information provided by the INS to the status verifier was erroneous, and

(3) Provides information which identifies the status verifier, the agency and the agency public benefit and includes the agency's address, and telephone number, and

(4) Provides a description of the agency appeal process which is available to the applicant.

(d) The verification process shall be deemed to have commenced when the applicant completes and signs the Form I referred to in subparagraph (a)(1) of this section and to be completed upon the completion of the applicable appeals process as provided in Section 12107 of this chapter. In the event that the applicant does not request an appeal in a proper and timely manner, then the verification process shall be deemed to be completed upon the expiration of the time limit for requesting the appeal. The applicant may waive, in writing, his or her right to appeal at any time prior to the expiration of the time limit for requesting the appeal and the verification process shall be deemed to be completed upon receipt by the status verifier of such waiver.

(e) The agency and any housing sponsor or qualified mortgage lender acting pursuant to this chapter shall not be liable for any action, delay or failure of the INS or any other person or entity in conducting the verification process.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Amendment of section and NOTE filed 11–2–98; operative 12–2–98 (Register 98, No. 45).
4. Amendment of subsection (b) filed 2–4–99 as an emergency; operative 2–4–99 (Register 99, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–4–99 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to 2–4–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 2000, No. 5).

§ 12105. Federal Public Benefits.

Where a multifamily program unit, single family program loan or residential structure secured by a single family program loan is a federal public benefit pursuant to the provisions of PRWORA, such Federal public benefit provisions shall apply instead of the provisions of this chapter.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 6–9–98 order transmitted to OAL 9–21–98 and filed 10–28–98 (Register 98, No. 44).
3. Repealer of former section 12105 and renumbering of former section 12106 to section 12105, including amendment of section and NOTE, filed 11–2–98; operative 12–2–98 (Register 98, No. 45).
4. Amendment filed 2–4–99 as an emergency; operative 2–4–99 (Register 99, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–4–99 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to 2–4–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 2000, No. 5).

§ 12106. Remedies for Ineligibility.

(a) In the case of a new tenancy, any household containing one or more applicants who are determined to be ineligible prior to occupancy, shall be denied occupancy to the multifamily program unit.

(b) Where a multifamily program unit is occupied by an ineligible household, the housing sponsor shall, within one hundred eighty (180) calendar days following the completion of the eligibility verification process, either commence proceedings to evict the ineligible household or substitute for the noncompliant multifamily program unit another unit within the housing development or residential structure which is occupied by an eligible household (or which is vacant and reserved for occupancy by an eligible new tenancy household) and which is otherwise compliant with the agency's requirements. Notwithstanding any other provision of this chapter, in no event shall an eviction be commenced with respect to a multifamily program unit before one hundred eighty (180) calendar days following the effective date of this chapter. Once an eviction is commenced it shall be diligently pursued by the housing sponsor until the ineligible household is removed, unless prior thereto, the housing sponsor substitutes a compliant multifamily program unit for the noncompliant one. So long as such eviction is diligently pursued, the housing sponsor and the affected unit shall not be in violation of this chapter with respect to such unit.

(c) In the case of a new loan, all applicants who are not finally verified as eligible shall be denied the single family program loan. In the case of any single family program loan, all applicants who are not finally verified as eligible shall be denied any necessary agency approval of their acquisition of, or addition to title to, the residential structure.

(d) In the event that an applicant's citizenship, other nationality or alien status is misrepresented to a housing sponsor, qualified mortgage lender, the agency or their representatives for the purpose of obtaining an agency public benefit, such housing sponsor, qualified mortgage lender, the agency or their representatives may take appropriate remedial action against such applicant which may include but shall not necessarily be limited to denial of a single family program loan, denial of approval of the applicant's acquisition, or addition to title to, the residential structure securing a single family program loan, foreclosure of a single family program loan or debarment from the receipt of future agency public benefits.

(e) In the event that a housing sponsor or qualified mortgage lender fails to comply with the requirements of this chapter, such noncompliance shall be deemed to be a violation of not only this chapter but also a violation of any regulatory and/or other loan agreement with the agency or mortgage purchase and/or servicing and/or other agreement with the agency, as applicable, which violation shall entitle the agency to pursue any appropriate remedies against the housing sponsor or qualified mortgage lender under any provisions of such agreements or otherwise available at law or in equity. Notwithstanding the foregoing, a qualified mortgage lender shall only be liable for repurchasing a loan if it intentionally or negligently made the loan to an ineligible applicant.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050–51070, 51100–51253 and 51325–51340, Health and Safety Code.

HISTORY

1. New section filed 6–9–98 as an emergency; operative 8–1–98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11–30–98 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 6-9-98 order transmitted to OAL 9-21-98 and filed 10-28-98 (Register 98, No. 44).
3. Renumbering of former section 12106 to section 12105 and renumbering of former section 12107 to section 12106, including amendment of section and NOTE, filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

§ 12107. Appeal Process.

(a) Any applicant who is determined to be ineligible to receive an agency public benefit pursuant to this chapter may appeal such determination as provided in this section.

(b) The applicant shall utilize the following appeal process:

(1) To be considered, an appeal: (A) must be submitted in writing to the agency; (B) must be either hand-delivered, facsimile-transmitted or postmarked within fifteen (15) calendar days from the applicant's receipt of the written notice of determination of ineligibility; and (C) must state the reason the applicant believes the determination was in error.

(2) Upon receipt of an appeal, the agency shall appoint a person to serve as a review officer which person may be either an employee or independent contractor of the agency. The review officer shall not be the same person as rendered the determination being appealed nor a subordinate of such person.

(3) The review officer may determine the relevance of the submitted information and may request additional information from the applicant or the person who rendered the determination being appealed and any other source he or she determines, in his or her sole discretion, has relevant and reliable information, including but not limited to, the INS. The review officer may set a cut-off time after which no additional information will be accepted.

(4) The review officer shall conduct a review of the determination being appealed, including all information upon which it was based as well as all information submitted by the applicant in support of his or her appeal. The authority of the review officer shall be limited to determinations of eligibility pursuant to this chapter and he or she shall have no authority to overrule any decision or conclusion of the INS regarding the applicant's immigration status.

(5) Notwithstanding any other provision of this chapter, if, during the appeal process, the review officer is informed by the agency that the applicant is ineligible to receive the agency public benefit for reasons other than those set forth in this chapter, the appeal shall be dismissed.

(6) The review officer shall use his or her best efforts to provide a written notice of decision to the applicant within fifteen (15) calendar days following the receipt of the appeal provided, however, that in the event the review officer is unable to do so, he or she shall provide a written notice to the applicant that (A) additional time is necessary, (B) the reasons why, and (C) the date by which the decision will be rendered. In the event that the review officer is unable, after using his or her best efforts to do so, render the decision within the specified time frame, the review officer may repeat the extension process, as necessary, until the decision is rendered. The decision of the review officer shall be a final administrative decision which completes the final verification process.

NOTE: Authority cited: Sections 51050(e), 51050(s), 51067 and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050-51070, 51100-51253 and 51325-51340, Health and Safety Code.

HISTORY

1. New section filed 6-9-98 as an emergency; operative 8-1-98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-30-98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-9-98 order transmitted to OAL 9-21-98 and filed 10-28-98 (Register 98, No. 44).
3. Renumbering of former section 12107 to section 12106 and renumbering of former section 12108 to section 12107, including amendment of section and NOTE, filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

§ 12108. Appeal Process. [Renumbered]

NOTE: Authority cited: Sections 51050(e), 51050(s) and 51349, Health and Safety Code. Reference: 8 U.S.C. §§ 1601, 1621, 1625, 1641 and 1642; and Sections 51050-51070 and 51100-51253, Health and Safety Code.

HISTORY

1. New section filed 6-9-98 as an emergency; operative 8-1-98 (Register 98, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-30-98 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-9-98 order transmitted to OAL 9-21-98 and filed 10-28-98 (Register 98, No. 44).
3. Renumbering of former section 12108 to section 12107 filed 11-2-98; operative 12-2-98 (Register 98, No. 45).

Chapter 4. Procedures of Board of Directors

Article 1. Board Action

§ 13300. Quorum.

A quorum shall consist of fifty-one percent (51%) of voting Board members then in office.

NOTE: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 50901 and 50916, Health and Safety Code.

HISTORY

1. New Chapter 4 (Articles 1-4, Sections 13000-13302, not consecutive) filed 10-18-79; effective thirtieth day thereafter (Register 79, No. 42).
2. Repealer of Articles 1-3 (Sections 13000-13203, not consecutive) and Article 4 (Section 13302), and renumbering of Article 4 (Sections 13300 and 13301) to Article 1 (Sections 13300 and 13301) filed 7-28-83; effective thirtieth day thereafter (Register 83, No. 31).

§ 13301. Vote Requirement.

No action shall be taken by the Board of Directors without the affirmative vote of fifty-one percent (51%) of the voting Board members then in office at the duly called Board meeting.

NOTE: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 50901 and 50916, Health and Safety Code.

§ 13302. Approval of Contractual Agreements and Debt Obligations.

(a) The Board of Directors shall authorize any sale of obligations or securities or other debt obligations and shall approve other major contractual agreements. Any other contractual agreements or debt obligations may be approved by the Executive Director pursuant to this section. The Board of Directors may also delegate any contracting authority to the Executive Director on terms provided by Board resolution.

(b) "Major contractual obligations" shall mean operating agreements or obligations which in any fiscal year exceed, or are reasonably expected to exceed the higher of \$1,000,000, or such other sum as the Board of Directors may establish from time to time by resolution. Obligations which in any fiscal year do not exceed, or are not reasonably expected to exceed the amount established above may be approved by the Executive Director. The Board of Directors may approve any major contractual obligation either by resolution; or by approving the Agency's annual operating budget, provided that any such major contractual obligation is set forth in a line item in such budget. If the Executive Director determines that there is an emergency, and that such emergency requires the Agency to enter into a major contractual obligation on an expedited basis, the Executive Director may approve the obligation, but shall bring the obligation to the Board for review and ratification at the next regularly scheduled Board meeting.

(c) The Executive Director may delegate his/her authority to approve contractual agreements or debt obligations to any employee of the Agency. Except in the event of extraordinary circumstances, any such delegation of authority shall be in writing and a copy filed with the General Counsel prior to the exercise of such authority. Under extraordinary circumstances, the Executive Director may delegate orally his/her authority to approve contractual agreements or debt obligations. In delegating his/her authority to approve contractual agreements or debt obligations the Executive Director may impose limitations and/or conditions on such authority and may permit further delegation of such authority to any other employee of the Agency.

(d) "Extraordinary circumstances," as used in subdivision (c) above, means such circumstances as the Executive Director shall determine are

sufficient to justify an oral delegation of his/her authority to approve contractual agreements or debt obligations. A determination by the Executive Director that extraordinary circumstances exist may be validly communicated, orally or in writing, to any employee of the Agency.

(c) The Executive Director may ratify the purported approval by any employee of the Agency of any contractual agreements or debt obligations which would have been within the authority of the Executive Director to approve at the time of such purported approval.

(f) No sale of obligations or securities or debt obligations or contractual agreements shall be approved unless and until they have been approved by the General Counsel as to legal sufficiency. The General Counsel shall determine which contractual agreements or debt obligations require Board of Director approval as provided herein and which do not. The General Counsel may issue opinions which interpret this section and any employee of the Agency may act in reliance upon such opinion. The General Counsel may delegate his/her authority under this section to other attorneys employed by the Agency.

NOTE: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 7 and 50914, Health and Safety Code.

HISTORY

1. New section filed 10–16–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 42).
2. Amendment of subsections (a) and (c), repealer and new subsection (b), repealer of subsection (d) and subsection relettering filed 12–19–2005; operative 12–19–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 51).

Chapter 5. Home Ownership and Home Improvement [Repealed]

HISTORY

1. Repealer of chapter 5, articles 1–8, sections 14001–14802 filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

Chapter 6. Housing Bond Credit Committee: Regulations Prescribing Procedures [Repealed]

NOTE: Authority cited: Sections 51360 and 51360.5, Health and Safety Code. Reference: Sections 51360 and 51360.5, Health and Safety Code.

HISTORY

1. Order of Repeal of Chapter 6 (Articles 1–6, Sections 15000–15045, not consecutive) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26). For prior history, see Register 80, No. 26.

Chapter 10. Loan and Bond Insurance

Article 1. General

§ 19001. Definitions.

Unless otherwise defined in this Article all terms shall have the meanings set forth in Division 31 of the Health and Safety Code (“Code”), Chapter 2 of Part 1 and Chapter 1 of Part 4. As used in this Chapter the following terms shall have the meanings set forth herein:

(a) “Insurance” means loan or bond insurance issued by, or for which a commitment to issue has been made by, the Agency. The term “insurance” includes coinsurance or reinsurance.

(b) “Loan” means a mortgage loan, acquisition loan, construction loan, refinance loan, loan for rehabilitation, property improvement loan, or other advance of money or participation in such loan or advance, utilized for the provision of owner-occupied or rental housing dwelling units.

NOTE: Authority cited: Sections 51050(e) and 51650, Health and Safety Code. Reference: Sections 51650 and 51852(n), Health and Safety Code.

HISTORY

1. New Chapter 10 (Articles 1–3, Sections 19001–19300 not consecutive) filed 10–21–77; effective thirtieth day thereafter (Register 77, No. 43).
2. Repealer of Article 1 (Sections 19001 and 19002) and new Article 1 (Section 19001) filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).

Article 2. Loan Insurance [Repealed]

HISTORY

1. Repealer of article 2, sections 19200–19207 filed 12–19–2005; operative 12–19–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 51).

Article 3. Bond Insurance for Local Public Entities [Repealed]

HISTORY

1. Repealer of article 3, sections 19300–19301) and repealer of section filed 12–19–2005; operative 12–19–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 51).

Article 4. Mortgage Insurance on SB1862 Loans [Repealed]

1. Repealer of article 4, section 19400 filed 12–19–2005; operative 12–19–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 51).

Chapter 20. Cal–First Home Buyers [Repealed]

HISTORY

1. Repealer of chapter 20, articles 1–2, sections 20100–20209 filed 11–12–96; operative 12–12–96 (Register 96, No. 46).

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